

STATE OF CALIFORNIA
DEPARTMENT OF INSURANCE
300 Capitol Mall, 17th Floor
Sacramento, California 95814

**FINAL STATEMENT OF REASONS
(FOR RESUBMISSION)**

File No. RH 04038570

Proposed additions to the Insurance Commissioner's regulations pertaining to claims adjuster and medical bill reviewer standards and insurer certification for workers' compensation insurance claims adjusters and medical bill reviewers.

General Update of Information Contained in the Initial Statement of Reasons

The regulations described in this Statement of Reasons have been drafted in accordance with the statutory requirement in Insurance Code Section 11761, which became effective on January 1, 2004. These regulations are intended to implement and make specific the requirements of this section of the Insurance Code.

Insurance Code Section 11761 requires the insurance commissioner to adopt regulations setting forth the minimum standards of training, experience, and skill that workers' compensation claims adjusters and medical bill reviewers must possess to perform their duties. There are no other statutes under California law that authorize the Insurance Commissioner (hereinafter "commissioner") to set such standards. There are no federal regulations concerning the training and certification of California workers' compensation claims adjusters or medical bill reviewers.

The purpose of the regulation is to allow the commissioner to set the minimum standards of training, experience, and skill for workers' compensation claims adjusters and medical bill reviewers and to require insurers, as defined in Insurance Code Section 11761, to certify that claims adjusters and medical bill reviewers acting on their behalf, including personnel employed by another entity, meet the minimum standards determined by the Insurance commissioner. Insurers, as defined in the law, include workers' compensation insurance companies, the State Compensation Insurance Fund, private and public employers who are self-insured pursuant to a certificate of self-insurance issued by the Department of Industrial Relations, and third party administrators who possess a certificate of consent from the Department of Industrial Relations.

A summary and reasons for changes to the original proposed regulations is provided below as an update of the information contained in the Initial Statement of Reasons.

Identification of Data, Studies, Reports, or Similar Documents

The insurance commissioner has not relied on any technical, theoretical, or empirical study or report, or similar document, proposing the adoption of these regulations.

Mandate on Local Agencies and School Districts

The Insurance commissioner has determined that there will not be any mandate upon local agencies or school districts.

No Reasonable Alternative

The Insurance commissioner has determined that no reasonable alternative to the proposed regulations has been identified is more effective in carrying out the purposes of the enabling legislation nor has any alternative been identified that would be as effective and less burdensome to affected private persons than the proposed action. This determination is supported by the extensive record contained in this Rule Making File and is based upon the requirements set forth in the enabling legislation.

Reports Required by Regulation

The Insurance Commissioner finds that it is necessary for the health, safety, or welfare of the people of the State of California that the reports required by these regulations apply to businesses.

Adverse Economic Impact on Small Business

The commissioner has not received nor rejected any proposed alternatives that would lessen the adverse economic impact on small business. The commissioner has determined that these regulations do not create adverse economic impact on small business.

Specific Update of Information Contained in Initial Statement of Reasons: Summary and Reasons for Changes to Original Regulation Text

Global Changes to the Article

The Authority and Reference citations are changed to conform to the accepted method of noting these.

The term certification is reserved for the sole act of insurers providing certifications to the Insurance Commissioner regarding training and qualifications of those adjusting workers' compensation claims and performing medical bill review. The method of insurers identifying those qualified to adjust claims or perform bill review has been amended from certification to designation to avoid confusion with the certification that is given to the Insurance Commissioner as required under the enabling statute.

Section 2592 Authority and Purpose

This section was amended to specify the purpose of the regulations was for insurers to certify to the Insurance Commissioner that they meet the requirements established as is required by the enabling statute.

Section 2592.01 Definitions

The introductory phrase to this section was amended to reflect that the definitions are for those terms used in the article.

Paragraph (b) is amended to clarify that the definition of “claims adjuster” includes employees of an entity that is not an insurer. Thus temporary employees or employees of labor contractors who function as claims adjusters are also within the regulatory definition. The term “medical only claim” was stricken since it is not defined and the definition of “medical-only claims adjuster” was added. The distinction between indemnity and medical benefits was deleted since indemnity benefits were not defined. The term “claims adjuster” also includes “experienced claims adjuster” so that the term used in the regulations applies to both. This paragraph is amended to clarify that a physician performing utilization review under Labor Code section 4610 is not a claims adjuster.

Paragraph (c) is amended to include persons assisting an instructor and to better define electronic methods of communicating instruction.

Paragraph (e) is amended to clarify that curriculum also applies to medical-only claims adjusters and medical bill reviewers.

Paragraph (f) is amended to allow those who have been responsible for supervising claims adjusters to also qualify as an experienced claims adjuster with the requisite experience. It is amended to eliminate the time requirement of five out of eight years if a claims adjuster has passed the self-insurance examination since it is duplicative to the requirement to be experienced without the exam. It is amended to require experienced claims adjusters to be designated by insurers. This paragraph is also amended to point out that a trained claims adjuster can also be designated an experienced claims adjuster with the requisite experience since only experienced claims adjusters can supervise claims adjuster and medical bill reviewer trainees.

Paragraph (g) is amended to eliminate the training requirement since that is not a prerequisite to being an experienced medical-only claims adjuster.

Paragraph (h) is added to provide a definition for “experienced medical bill reviewer.” This definition was necessary to allow qualified bill reviewers to be exempt from the training requirements in the same way that experienced claims adjusters are exempt.

All subsequent paragraphs in this section were renumbered to reflect the addition of the new definition.

Paragraph (i) is amended to change the definition of “instructor” to specify that anyone who had at least five years of on-the-job experience adjusting California workers’ compensation claims in the previous eight years and who has been designated by an insurer is qualified and allow a person who has had at least eight years of experience in California workers’ compensation within the past twelve years to be qualified without being designated. This allows persons who are designated and considered an experienced claims adjuster and those that have extensive knowledge and experience in workers’ compensation, despite the fact that they are not designated and may no longer be performing active claims adjusting, to instruct.

Paragraph (k) is added to define medical bill reviewer and expand the definition of a medical bill reviewer to include employees of entities other than insurers. Thus temporary employees or employees of labor contractors who function as medical bill reviewers are also within the regulatory definition.

Paragraph (l) is amended to conform to the definition contained in the enabling statute.

Paragraph (m) is added to define a “medical-only claims adjuster” as a person who only adjusts workers’ compensation claims involving medical benefits as defined under Article 2 (commencing with Labor Code Section 4600) of Chapter 2 of Part 2 of Division 4 of the Labor Code. This definition is similar to the “claims adjuster” definition and also includes a provision that physicians performing utilization review as allowed under Labor Code section 4610 are not medical-only claims adjusters.

All subsequent paragraphs in this section were renumbered to reflect the addition of the new definition.

Paragraph (n) is amended to change the term certification to designation and to also require medical-only claims adjusters and medical bill reviewers to obtain post-designation training.

Paragraph (o) is amended to include “trainee” as term for “student” and to include medical-only claims adjusters and medical bill reviewers.

Paragraph (q) is added to define a “training entity.”

Section 2592.02 Training Required for Claims Adjusters and Medial Only Claims Adjusters

The title to this section and paragraph (a) are amended to clarify that experienced claims adjusters and medical-only claims adjusters as defined are exempt from the training requirements of this Article. Subparagraph (1) was amended to reduce the required number of hours of training for medical-only claims adjusters from 120 to 80 and to

reduce the number of hours in a classroom with an instructor from 80 to 50. Subparagraph (2) was amended to increase the number of hours a medical-only claims adjuster would need to become a full claims adjuster from 40 to 80, as a result of the previous subparagraph's decrease in the total number of hours required to be a medical-only claims adjuster.

Paragraph (b) is amended to state that no individual could adjust claims for more than twelve months without having been trained but also to expand the time during which training must be completed in certain circumstances.

Paragraph (c) is amended to increase the time from two years to three years to allow courses or training taken prior to the enactment of these regulations due to the time it has taken to promulgate these regulations and the fact that many insurers and claims adjusters have been taking courses in preparation to meeting these requirements.

Paragraph (d) is amended to change the beginning date of the requirement for post-designation training to the effective date of the regulations. Also, the requirement of such training for medical-only claims adjusters was reduced from thirty hours every two years to twenty hours every two years. The paragraph also clarified that the post-designation training requirement applied to trained and experienced claims adjusters and medical-only claims adjusters.

Paragraph (e) is amended to clarify that post-designation training does not need to be in a classroom with an instructor to allow more informal sources of training to qualify. It was also amended to require insurers to verify the post-designation training so as to be able to certify that claims adjusters and medical-only claims adjusters have adequately met post-designation training.

Paragraph (f) is added to require designated claims adjusters and medical-only claims adjusters to fulfill the requirements for post-designation training every two years in order to remain designated and to not allow such persons to adjust claims until meeting those requirements.

All subsequent paragraphs in this section were renumbered to reflect the addition of paragraph (f).

Paragraph (g) is amended to correspond to the definition of training entity and to require that such training away from an insurer be for the entire designation curriculum.

Paragraph (h) is amended to add medical-only claims adjuster.

Paragraph (i) is amended to add medical-only claims adjuster and clarify that an insurer may not use a claims adjuster who has not been trained, is not experienced, or who is not in training under the supervision of an instructor or experienced claims adjuster regardless of whether that person is an employee of the insurer or of some other entity.

Section 2592.03 Curriculum

Paragraph (a) is amended to eliminate redundancy with the definition of claims adjuster.

Subparagraph (20) of paragraph (a) is added to include topics regarding medical dispute resolution. All subsequent subparagraphs in this paragraph were renumbered to reflect the addition of the new topic.

Paragraph (b) was amended to specify the training topics required for medical-only claims adjusters.

Section 2592.04 Training Required for Medical Bill Reviewers

This section was amended to clarify that insurers, and not medical billing entities used by insurers, are primarily responsible to certify training and qualification requirements required by the promulgating statute and these regulations to the Insurance Commissioner. This section was also amended to clarify that insurers that employ their own bill reviewers, and not just medical billing entities, must train them. It also clarifies that all personnel employed as medical bill reviewers must be trained, other than experienced medical bill reviewers as defined.

Paragraph (b) is amended to increase the time for training of medical bill reviewers from six months to twelve months, in line with training from claims adjusters and medical-only claims adjusters and to not allow medical bill reviewers who have not been fully trained to move from one insurer to another to avoid training.

Paragraph (c) is added to allow classes taken one year prior to the effective date of these regulations to be used to meet the training requirements with verification to the insurer. This is less time than claims adjusters since the amount of training required is much less and should be more current due to the recent workers' compensation reforms.

All subsequent paragraphs in this section were renumbered to reflect the addition of paragraph (c).

Paragraph (d) is amended to reduce the post-designation training requirement for medical bill reviewers to sixteen hours every two years from sixteen hours every year upon the effective date of the regulations. Such post-designation training shall include changes to the law to be current and cover topics that were required for training.

Paragraph (e) is added to conform with the similar requirement of claims adjusters and medical-only claims adjusters meeting post-designation training or otherwise not being authorized to review medical bills.

All subsequent paragraphs in this section were renumbered to reflect the addition of paragraph (e).

Paragraph (f) is amended to mirror the requirements for training of claims adjusters and medical-only claims adjusters. It is also amended to require insurers to be responsible for the training performed by medical billing entities that the insurer uses so as to be able to certify to the insurance commissioner regarding the qualifications of medical bill reviewers that are not the insurer's employees.

Paragraph (h) is amended to eliminate the subjects of "cumulative trauma" and "WCAB procedures" from the list of required topics that must be taught to medical bill reviewers since reviewing medical bills will likely not require knowledge of these topics. It is also amended to specify the topics are for the curriculum training. It is also amended to insure that the statutes and regulations regarding fee schedules are a part of the curriculum in addition to just the fee schedules themselves.

Paragraph (i) is added to correspond to the similar requirement for claims adjusters and medical-only claims adjusters that persons not designated as meeting training or experience for medical bill review, unless undergoing training, are not authorized to do so on behalf of an insurer.

Section 2592.05 Designation

Paragraph (a) is amended to clarify that the provisions of this section apply to an insurer that is employing its own medical bill reviewers. The paragraph was also amended to specify the forms for Designation of claims adjusters, medical-only claims adjusters, and medical bill reviewers.

Paragraph (b) is amended to eliminate redundancy with those terms already defined and also amended to specify the form for the Designation of experienced claims adjusters and experienced medical-only claims adjusters. Subparagraphs (1) and (2) are deleted and their requirements for post-designation training are added to Section 2592.02.

Subdivision (c) is deleted and its provisions added to Section 2592.06.

A new subdivision (c) is added to clarify that an insurer shall provide an Experienced Medical Bill Reviewer Designation on a specified form to an experienced medical bill reviewer.

Subdivision (d) is added to clarify that the insurer shall provide a specified form for the required post-designation training.

Subdivision (e) is added to allow medical billing entities to provide designation forms to employees or agents that meet the requirements of this Article so long as the insurer using the medical billing entity confirms that the medical billing entity has met all requirements and obtains copies of records documenting this so as to support its certification to the Insurance Commissioner.

Section 2592.06 Maintenance of Records

Paragraph (a) is amended to simplify the record keeping requirements by specifying that the copies of Designation forms must be kept for all claims adjusters, medical-only claims adjusters, and medical bill reviewers employed or acting on the insurer's behalf whether or not those persons were trained by that insurer. It is also amended to modify the time for maintaining those records from eight years to five years after the person leaves the insurer's employ or has been acting on the insurer's behalf.

A new paragraph (b) is added to require insurers to maintain copies of post-designation training forms for individuals in its employ or acting on its behalf whether or not it provided the post-designation training. Such records will be kept by the insurer for as long as the individual is employed or acting on its behalf and for five years thereafter.

A former part of paragraph (a) is separated into a new paragraph (c) and also amended to require insurers that designated claims adjusters, medical-only claims adjusters, and medical bill reviewers to provide copies of those designation forms to insurer that subsequently employ or use those individuals within 20 working days.

Former paragraph (b) is amended to paragraph (d) and is further amended to require insurers to maintain records of all courses given or taken. Subparagraph (2) is amended to require additional information on the description of curriculum to be able to document who provided the instruction, the instructor, and persons who instructed under the instructors supervision.

Paragraph (e) is added to require insurers to maintain specified records regarding post-designation courses, seminars, workshops, or other training.

The next paragraph was renumbered to reflect the addition of the previous paragraph.

Paragraph (f) is amended to require copies of designation forms to be provided by the insurer to the claims adjuster, medical-only claims adjuster, or medical bill reviewer 20 working days after a request by the claims adjuster, medical-only claims adjuster, or medical bill reviewer.

Paragraph (g) is added to allow a policyholder or injured worker whose claim is being adjusted to obtain a copy of the forms demonstrating the claims adjuster's, medical-only claims adjuster's, or medical bill reviewer's qualifications.

Section 2592.07 Certification and Submission of Documents

The title of this section is amended to identify it as dealing with certification by insurers and submission of certification documents to the Insurance Commissioner.

Paragraph (a) is amended to specify the document to be submitted to the Insurance Commissioner, when that document will be provided, and what those documents will

state. The document shall require the person or executive officer responsible for the insurer's claims operation to certify regarding the total number of claims adjusters adjusting claims on its behalf, the total number of claims adjusters and medical-only claims adjusters who are trained or experienced, the percentage of claims adjusters and medical-only claims adjusters who are trained or experienced, all persons adjusting claims on behalf of the insurer are designated to do so or are in training, and the course of instruction provided for training of all claims adjusters and medical-only claims adjusters and the number of hours meet the requirements of these regulations. The paragraph clarifies that the Insurance Commissioner shall publish the information in the specified documents on the Department of Insurance public website.

Paragraph (b) was added to require each insurer to submit a document certifying the medical bill reviewer information similar to the claims adjuster and medical-only claims adjuster information required in paragraph (a) and to publish that information on the Department of Insurance public website.

Section 2592.08 Insurer Annual Certification Form—Claims Adjusters and Medical-Only Claims Adjusters

This section was added to provide the text of a form that is required by section 2592.07(a).

Section 2592.09 Insurer Annual Certification Form—Medical Bill Reviewers

This section was added to provide the text of a form that is required by section 2592.07(b).

Section 2592.10 Designation—Claims Adjuster and Medical-Only Claims Adjuster

This section was added to provide the text of a form that is required by section 2592.05(a).

Section 2592.11 Designation—Medical Bill Reviewer

This section was added to provide the text of a form that is required by section 2592.05(a).

Section 2592.12 Designation—Experienced Claims Adjuster and Medical-Only Claims Adjuster

This section was added to provide the text of a form that is required by section 2592.05(b).

Section 2592.13 Designation—Experienced Medical Bill Reviewer

This section was added to provide the text of a form that is required by section 2592.05(c).

Section 2592.14 Post-Designation Training Form

This section was added to provide the text of a form that is required by section 2592.05(d).

Summary of Objections or Recommendations and Explanation of Proposed Action or Response for No Change

Summary of Irrelevant Comments: Some comments were received complaining that claims adjusters workloads were too heavy; that some claims adjusters had heavier workloads than others; that the repeal of the Minimum Rate Law had a negative effect on claims adjusting, that the workers' compensation system has become so complex that it is almost impossible for claims adjusters to do everything they are required to do, that certain non-compensable claims should be handled differently, that the workers' compensation system should be made affordable, that there should be more laws dealing with fraud and fraud prosecution, and that the system should be made more efficient.

Response to Irrelevant Comments: The insurance commissioner has considered these comments and rejected them because they are not specifically directed at the proposed regulations nor are they directed to the procedures followed in proposing or adopting the regulations.

COMMENTS RELATED TO NOTICE OF PROPOSED ACTION AND NOTICE OF PUBLIC HEARING DATED JULY 29, 2004

General

Commentator: Terry Re, Service Employees International Union

Date of Comment: October 28, 2004

Type of Comment: Oral and Written

Summary of Comment: There will be no uniform training throughout the workers' comp industry if there are no true guidelines on curriculum. There is too much variance in training material and competence of trainers to guarantee the competence of adjusters.

Response to Comment: The commissioner has considered this comment and rejected it because requiring a more prescriptive and uniform curriculum and training materials would directly conflict with the spirit of the statute which states "the regulations adopted pursuant to this section shall, to the greatest extent possible, encourage the use of existing private and public education, training, and certification programs."

Commentator: John Casas, JT Integrated Resources

Date of Comment: October 28, 2004

Type of Comment: Oral and Written

Summary of Comment: Have every claims handling entity report on caseload, penalties, litigation rate, and delay and denial rates.

Response to Comment: The commissioner has considered this comment and rejected it because he lacks the authority to require the requested information.

Commentator: Allan Blakney, California Workers' Compensation Interpreters Association

Date of Comment: October 27, 2004

Type of Comment: Written

Summary of Comment: CDI should consider sanctions for payors who make claims adjusters choose between matters training teaches are correct and actual policies that are in conflict.

Response to Comment: The commissioner has considered this comment and rejected it because the requested actions are not authorized by the enabling legislation and are beyond the scope of these regulations.

Commentator: Carolyn Richard, Santa Ana

Date of Comment: October 18, 2004

Type of Comment: Written

Summary of Comment: We need to establish maximum case load. Suggest maximum of 185 cases.

Response to Comment: The commissioner has considered this comment and rejected it because he does not have the authority to establish a maximum case load.

Commentator: Terry Re, SEIU

Date of Comment: October 28, 2004

Type of Comment: Oral/Written

Summary of Comment: Certification doesn't guarantee adequate handling of cases. There could be one certified adjuster with 800 cases. There should be case load language in the regulations.

Response to Comment: The commissioner has considered this comment and rejected it because he does not have the authority to establish a maximum case load.

Commentator: Terry Re, SEIU

Date of Comment: October 28, 2004

Type of Comment: Written

Summary of Comment: There should be some uniform method of tracking the education and experience of adjusters.

Response to Comment: The commissioner has considered this comment and has accepted it in part and rejected it in part. The regulations do provide for uniform reporting requirements for certification of the training and/or experience of claims adjusters and for providing documentation to claims adjuster, medical-only claims adjusters, and medical bill reviewers regarding their qualifications. These requirements are for the purpose of insurers to be able to certify to the commissioner that they have complied with the statutory requirements and to demonstrate compliance.

Commentator: Terry Re, SEIU

Date of Comment: October 28, 2004

Type of Comment: Oral

Summary of Comment: Certifications for training should not go to insurers but rather to the claims adjusters.

Response to Comment: The commissioner has considered this comment and has accepted it in part and rejected it in part. The requirements of the statute state that insurers shall certify to the commissioner that their claims adjusters and medical bill reviewers meet the minimum standards of training, experience, and skill, which has been met by these regulations. The regulations further require insurers to provide documentation to claims adjusters and medical bill reviewers of their qualifications through designation.

2592.01

Commentator: Sheila Garcia

Date of Comment: October 4, 2004

Type of Comment: Written

Summary of Comment: There is no definition for “Medical Bill Reviewer” or definition or reference to “experienced medical bill reviewer.”

Response to Comment: The commissioner has considered this comment and accepted it. Definitions of “experienced medical bill reviewer” and “medical bill reviewer” were added to the regulations.

2592.01(b)

Commentator: Theo Pahos, American Association of Insurance Companies (ACIC)

Date of Comment: October 28, 2004

Type of Comment: Oral/Written

Summary of Comment: The proposed regulations are unclear regarding adjusters who are not employed by an insurer. The entity that employs the adjuster should be responsible for the training. It should be made clear that this regulation applies to everyone doing adjusting, not just those employed by insurers. Third party administrators sometimes use other firms, temps or other entities to do adjusting. So there could be adjusters who work for neither insurers nor third party administrators.

Response to Comment: The commissioner has considered this comment and accepted it in part and rejected it in part. This subparagraph was revised to clarify that the regulations apply to all workers’ compensation claims adjusters, including those who are employed by an entity that is not an insurer as defined by the regulations. However, the authorizing statute requires the insurers to certify to the commissioner, so it is the responsibility of the insurers to confirm the qualifications of all claims adjusters utilized.

2592.01(c)

Commentator: Dale Clough, St. Paul Travelers Insurance Company

Date of Comment: October 28, 2004

Type of Comment: Oral/Written

Summary of Comment: Technology based programs should be allowed to qualify as appropriate training.

Response to Comment: The commissioner has considered this comment and accepted it. The commissioner believes this was already covered, but this subsection was revised to

clarify that the physical presence of an instructor in the classroom is not required, but allows the instructor to communicate by means of an electronic medium, including, but not limited to, audio, video, computer, or Internet.

2592.01(e)

Commentator: Allan Blakney, California Workers' Compensation Interpreters Association

Date of Comment: October 27, 2004

Type of Comment: Written

Summary of Comment: The Department of Insurance should revisit this and make the curriculum mandatory. There should be CDI oversight of the curriculum and there should be publication and unfettered distribution of all Department of Insurance approved training syllabi.

Response to Comment: The commissioner has considered this comment and rejected it because requiring a more prescriptive and uniform curriculum and training materials would directly conflict with the requirements of the implementing statute which states in part, "the regulations adopted pursuant to this section shall, to the greatest extent possible, encourage the use of existing private and public education, training, and certification programs." Additionally, the legislature did not specifically require the commissioner to handle training curriculum in such a manner.

2592.01(f)

Commentator: Cheryl Hanger, AccuMed

Date of Comment: October 22, 2004

Type of Comment: Written

Summary of Comment: "Experience" designation should be added for medical bill reviewers similar to claims adjusters.

Response to Comment: The commissioner has considered this comment and has accepted it. Section 2592.01(h) has been added defining "experienced medical bill reviewer.

Commentator; Theo Pahos, ACIC

Date of Comment: October 28, 2004

Type of Comment: Written

Summary of Comment: The word "continuously" could result in unfairness by disqualifying someone who has gone out for three months on maternity leave. We suggest adding a one time three month term of absence.

Response to Comment: The commissioner has considered this comment and rejected it because he has determined the word "continuously" does not preclude someone from taking a leave of absence from his or her employment for major illness, disability, military service, maternity leave, or any other leave required or permitted by state or federal law. Although on leave, as long as this person is still employed by their employer, it would count as continuous employment. Regardless, the definition was modified to allow someone to qualify as an experienced claims adjuster without

continuous employment as long as they have passed the self-insured exam within the past five years and are designated as an experienced claims adjuster by an insurer.

Commentator: Theo Pahos, ACIC

Date of Comment: October 28, 2004

Type of Comment: Oral/Written

Summary of Comment: There is uncertainty whether someone with five years experience must pass an exam to meet the minimum training requirements. We suggest if a person has 5 years experience, he or she should not have to pass an exam.

Response to Comment: The commissioner has considered this comment and rejected it because the regulations already provide that someone with five years of experience within the past eight years does not have to pass an exam to be qualified.

Commentator; Theo Pahos, ACIC

Date of Comment: October 28, 2004

Type of Comment: Written

Summary of Comment: It is unclear whether if one passes the exam after the effective date of regulations he or she must comply with the requirement for continuing education for experienced adjusters.

Response to Comment: The commissioner has considered this comment and rejected it because the regulations clarify that the requirement of continuing education applies to all trained and/or experienced claims adjusters.

Commentator: Sharon Faggiano, Employers Compensation Insurance Company

Date of Comment: October 28, 2004

Type of Comment: Oral/Written

Summary of Comment: What happens to adjusters who have had 4 years of experience after the effective date of the regulations? Will they be exempt considering that they will have five years at the end of 2005 or will they have to take a pro-rata number of hours of training? We suggest that they be exempt and have provided specific language with which to change the regulations.

Response to the Comment: The commissioner has considered this comment and rejected it because he has determined that the experience requirement currently in the regulations – 5 of the past 8 years of on-the-job experience for claims adjusters and 3 of the past 5 years of on-the-job experience for medical-only claims adjusters and medical bill reviewers - is the minimum necessary to ensure that claims adjusters can adequately perform their duties. IC section 11761(a) states that “(t)he commissioner shall adopt regulations setting forth the minimum standards...workers’ compensation claims adjusters must possess to perform their duties”. No matter where we set the experience cutoff requirements, some individuals will be affected unless we grandfather everyone in. We believe to grandfather in all claims examiners goes directly against to the spirit of the statute which is to establish a minimum level of training for claims examiners. To create exemptions will only dilute the effectiveness of these regulations and their intent to improve the quality of claims examining.

Commentator: Dale Clough/Annette Ball, St. Paul Travelers Insurance Company

Date of Comment: October 28, 2004

Type of Comment: Oral/Written

Summary of Comment: One could qualify as an instructor under (h) but not an experienced claims adjuster under (f). This should be changed.

Response to Comment: The commissioner has considered this comment and has accepted it in part. The definition of “instructor” was changed to increase the minimum requirements for those persons who may be qualified as an instructor but do not qualify as experienced claims adjusters. The commissioner determined that it is reasonable to allow some individuals to be instructors even though they do not qualify to adjust claims.

Commentator: Dale Clough, St. Paul Travelers Insurance Company

Date of Comment: October 28, 2004

Type of Comment: Oral

Summary of Comment: The requirement to have passed the self-insurance exam within the last five years to qualify as an “experienced claims examiner” should be removed.

Response to Comment: The commissioner has considered this comment and has accepted in part. The five year requirement remains as one way to qualify, but a person who has passed the exam and has continued to work as a claims adjuster or supervises claims adjusters may be designated an “experienced claims adjuster.”

Commentator: Sarah Widener-Brightwell, Sentry Insurance Company

Date of Comment: October 28, 2004

Type of Comment: Oral

Summary of Comment: Why would there be a separate definition of “instructor” as opposed to experienced claims adjuster? You could be a qualified instructor but not qualified as an experienced claims adjuster. This would be a problem in supervising adjusters if the supervisors would not fall into the experienced claims adjuster definition.

Response to Comment: The commissioner has considered this comment and has rejected it in part and accepted it in part. The commissioner has determined that there are some individuals who, because of their great expertise, should be permitted to be instructors but who would not necessarily be qualified to be claims adjusters.

The definition of “instructor” was changed to increase the minimum requirements for those persons who may be qualified as an instructor but do not qualify as experienced claims adjusters.

Commentator: Sarah Widener-Brightwell, Sentry Insurance Company

Date of Comment: October 28, 2004

Type of Comment: Oral

Summary of Comment: Someone who worked as a defense attorney would be equally qualified to supervise claims handlers as would someone who worked at a desk for five or eight years.

Response to Comment: The commissioner has considered this comment and rejected it. The purpose of the regulations is to determine minimum standards for claims adjusters, not supervisors. In addition, the commissioner has determined that despite legal training,

a defense attorney is not necessarily as qualified to supervise claims handlers as an experienced claims adjuster.

Commentator: Terry Re, SEIU

Date of Comment: October 28, 2004

Type of Comment: Oral

Summary of Comment: Anyone who has not done hands-on adjusting should not have the same certification as a hands-on claims adjuster. Anyone who has been away from claims adjusting for as long as a year does not have the knowledge. There are a lot of nuances and anyone who has been away from claims adjusting for a number of years should not be certified. Defense attorneys have a lot of knowledge of the law, but don't know the process. Supervisors, managers, and others who have been away from adjusting for any length of time should not be considered certified, not grandfathered.

Response to Comment: The commissioner has considered this comment and rejected it. The definition of experienced claims adjuster in the regulations sets the appropriate minimum standards for all those who are qualified to adjust claims.

Commentator: David Chetcuti, Acacia Pacific Holdings

Date of Comment: October 28, 2004

Type of Comment: Oral/Written

Summary of Comment: Managers, supervisors, and instructors should be able to petition CDI for an exemption so that they can be classified as ECA (experienced claims adjusters). It would be a paradox for them to supervise claims adjusters but not themselves be qualified as claims adjusters. How can someone who teaches an adjuster to do a job not be qualified to do the same job?

Response to Comment: The commissioner has considered this comment and has rejected it in part and accepted it in part. This provision was amended to allow persons who supervise claims adjusters within the last five out of eight years to be designated an experienced claims adjuster. The commissioner has determined that there are some individuals who, because of their great expertise, should be permitted to be instructors but who would not necessarily be qualified to be claims adjusters. The definition of "instructor" was changed to increase the minimum requirements for those persons who may be qualified as an instructor but do not qualify as experienced claims adjusters. In addition, the authorizing statute only requires the insurance commissioner to establish standards and have insurers certify they have met those standards, not to have the insurance commissioner administer a classifying system.

Commentator: Annette Ball, St.Paul Travelers Insurance Company

Date of Comment: October 28, 2004

Type of Comment: Oral/Written

Summary of Comment: People might qualify as an instructor but not an experienced claims adjuster.

Response to Comment: The commissioner has considered this comment and has rejected it in part and accepted it in part. The commissioner has determined that there are some individuals who, because of their great expertise, should be permitted to be instructors but who would not necessarily be qualified to be claims adjusters.

The definition of “instructor” was changed to increase the minimum requirements for those persons who may be qualified as an instructor but do not qualify as experienced claims adjusters.

Commentator: Terry Re, SEIU

Date of Comment: October 28, 2004

Type of Comment: Written

Summary of Comment: There should be a requirement of 160 hours of training and two years of hands-on experience to be an “experienced claims adjuster.”

Response to Comment: The commissioner has considered this comment and rejected it. The regulations already require 160 hours of training for claims adjusters. Also, the commissioner has determined that requiring two years of experience in addition to the required training would be unduly burdensome to the affected industry and is not a necessary requirement as a minimum standard for claims adjuster training.

Commentator: Drenée Miners, AAICP

Date of Comment: October 28, 2004

Type of Comment: Oral

Summary of Comment: Should be added to the definition of experienced claims adjuster someone who is certified by IEA, WCCP, CPCU, ARM, or Certified Insurance Counselors.

Response to Comment: The commissioner has considered this comment and has rejected it. Only an insurer, as defined, may certify that an individual is an experienced claims adjuster. An insurer may use the specified organizations for training its adjusters, if it wishes.

2592.01(h)

Commentator: Cheryl Hanger, AccuMed

Date of Comment: October 22, 2004

Type of Comment: Written

Summary of Comment: Add definition of experienced medical bill reviewer so that medical bill experience is considered in a comparable manner to that of claims adjusting.

Response to Comment: The commissioner has considered this comment and accepted it. A definition of “experienced medical bill reviewer” was added to the regulations as subparagraph 2592.01(h)

Commentator: Michael McClain, California Workers’ Compensation Institute (CWCI)

Date of Comment: October 28, 2004

Type of Comment: Oral/Written

Summary of Comment: Add definition of experienced medical bill reviewer.

Response to Comment: The commissioner has considered this comment and accepted it. A definition of “experienced medical bill reviewer” was added to the regulations as subparagraph 2592.01(h)

Note: the first letter at the end of the subparagraph in the following comments regarding Section 2592.01 refer to the original text; the second letter refers to the renumbered text in the revised regulations.

2592.01(h)/ (i)

Commentator: Christine King, California Division of Workers' Compensation (DWC)

Date of Comment: May 18, 2004

Type of Comment: Written

Summary of Comment: The definition of "instructor" is too limiting—i.e. medical professional teaching medical terminology. Especially since the law has changed so much in 8-plus years

Response to Comment: The commissioner has considered this comment and rejected it. The regulations do allow subject matter experts who would not qualify as an "instructor" to teach under the supervision of an instructor.

Commentator: Jennifer S. Lapinsky, Concentra

Date of Comment: October 28, 2004

Type of Comment: Written

Summary of Comment: As this section applies to both claims adjusters and bill reviewers, there should be Instructor I for claims adjusters and Instructor II for bill reviewers.

Response to Comment: The commissioner has considered this comment and has rejected it. The commissioner has determined that separate definitions for instructors for claims adjusters and medical bill reviewers are not necessary.

Commentator: Annette Ball, St Paul Travelers

Date of Comment: October 28, 2004

Type of Comment: Oral

Summary of Comment: The requirements to qualify for an instructor are less stringent than those to qualify as an experienced claims adjuster.

Response to Comment: The commissioner has considered this comment and accepted it. The definition of "instructor" was changed to be at least as stringent as "experienced claims adjuster."

Commentator: Theo Pahos, ACIC

Date of Comment: October 28, 2004

Type of Comment: Written

Summary of Comment: The definition of instructor should be amended to include individuals who have specific subject matter expertise. These individuals may just be "presenters" or "speakers."

Response to Comment: The commissioner has considered this comment and rejected it. He has determined that the request is already covered under the current definition which states that "(p)ersons knowledgeable about specific workers' compensation issues who are not instructors may train students under the direction of an instructor." This allows flexibility for individuals such as medical administrators, fraud experts, workers'

compensation attorneys and others with specific knowledge to come in and teach in a class as long as someone overseeing the entire training curriculum meets the definition of an instructor.

2592.01(i)/ (i)

Commentator: Theo Pahos, ACIC

Date of Comment: October 28, 2004

Type of Comment: Written

Summary of Comment: The inclusion of third party administrators in this section conflicts with Labor Code Section 3702.1(c)

Response to Comment: The commissioner has considered this comment and rejected it. He has determined that there is no conflict between the regulations and the Labor Code and notes that subsequent specific statutes created by the legislature control over prior general statutes.

Commentator: David J. Farber, American Association of Independent Claims Professionals (AAICP)

Date of Comment: September 28, 2004

Type of Comment: Written

Summary of Comment: This section should also reference the other two CDI licenses that are required of a third party administrator.

Response to Comment: The commissioner has considered this comment and rejected it. He has determined that it is not necessary to reference in this subparagraph any other Department of Insurance licenses required of third party administrators since the entities defined as insurers has been set forth in the statute and have been repeated in this subparagraph.

2592.01(j)/ (l)

Commentator: Michael McClain, CWCI

Date of Comment: October 28, 2004

Type of Comment: Oral/Written

Summary of Comment: Change “Medical billing entity” to “Medical bill review entity” to clarify that the regulations do not pertain to a medical provider who does the billing.

Response to Comment: The commissioner has considered this comment and rejected it. He has decided to use the same terminology in the regulations as in the enabling legislation (AB 1262) whenever possible. The term “medical billing entity” is also defined in statute.

2592.01(k)/ (n)

Commentator: Michael McClain, CWCI

Date of Comment: October 28, 2004

Type of Comment: Oral

Summary of Comment: The regulations should allow self-study hours. Include in self-study written text, audio tapes, videotapes, DVDs, CD programs, even on-line training. The participant would then provide the program outline and a certificate of attendance so it can be tracked as the State Bar does with attorneys.

Response to Comment: The commissioner has considered this comment and rejected it in part and accepted it in part. The commissioner has determined that the minimum qualifications for training cannot be met with a self-study program. However, electronic medium are allowed.

Commentator: Laurel Thurston, Republic Indemnity

Date of Comment: October 27, 2004

Type of Comment: Written

Summary of Comment: It is suggested that there be specific authorization for self-study of insurer-approved recorded material comprising no more than one-half the mandatory study hours for post-certification training. This change would permit effective utilization of technology.

Response to Comment: The commissioner has considered this comment and has rejected it. The commissioner believes specific authorization is not necessary because the current definition does not necessarily disallow insurer-approved recorded material to be used for post-certification training. The commissioner believes the current definition is sufficient to allow the insurer flexibility in determining what qualifies as post-certification training. Effective utilization of technology for training is already allowed for under the definition of “classroom” in Section 2592.01(c) of these regulations.

2592.02(a)

Commentator: David Corum, AIA

Date of Comment: October 26, 2004

Type of Comment: Written

Summary of Comment: This paragraph refers to claims adjusters who are exempt pursuant to 2592.01(f) and (g). However those paragraphs are merely definitions. Either those paragraphs should actually exempt, or this paragraph should affirmatively exempt.

Response to Comment: The commissioner has considered this comment and has accepted it. The language stating that certain claims adjusters are “exempt” from training “pursuant to” a previous paragraph has been struck. New language added to Section 2592.02(a) clarifies that certain claims adjusters defined by previous paragraphs are exempt from the training requirement.

Commentator: David Corum, AIA

Date of Comment: October 26, 2004

Type of Comment: Written

Summary of Comment: Since there is a definition of “experienced medical-only claims adjuster” in Section 2592.01(g), it is our interpretation that the training requirements for Section 2592.02(a) would not apply to this group.

Response to Comment: The commissioner has considered this comment and accepted it. The commissioner has excluded experienced medical-only claims adjusters from the

training requirements of paragraph (a) of Section 2592.02 unless such a person wishes to receive training to be a claims adjuster as noted in subparagraph (2) of paragraph (a).

Commentator: David J. Farber, AAICP

Date of Comment: September 28, 2004

Type of Comment: Written

Summary of Comment: Recommend specific language that says that this training requirement is not applicable to instructors or experienced claims adjusters.

Response to Comment: The commissioner has considered this comment and has accepted it in part and rejected it in part. The language stating that certain claims adjusters are “exempt” from training “pursuant to” a previous paragraph has been struck. New language added to the text clarifies that certain claims adjusters defined by previous paragraphs are exempt from the training requirement. There has been no change regarding instructors because the training requirement applies only to claims adjusters, not to instructors.

Commentator: David J. Farber, AAICP

Date of Comment: September 28, 2004

Type of Comment: Written

Summary of Comment: Classroom training should not be required. Other non-workers’ compensation claims adjusters are not required to do classroom training, but instead must accumulate 2000 hours of experience. Claims adjusters may be adequately trained through experience; formal training does not improve the quality of adjuster performance.

Response to Comment: The commissioner has considered this comment and rejected it. He has determined that the work of workers’ compensation claims adjusters is more complex than most other insurance claims handling and that formal training is required to meet the minimum standards contemplated by the legislation enabling these regulations.

Commentator: David J. Farber, AAICP

Date of Comment: September 28, 2004

Type of Comment: Written

Summary of Comment: If classroom training required, only 40 hours should be in classroom and 120 should be on the job.

Response to Comment: The commissioner has considered this comment and rejected it. Because workers’ compensation claims are so complex, claims adjusters who are not experienced need a minimum of 120 hours of classroom training.

Commentator: Terry Re, SEIU

Date of Comment: October 28, 2004

Type of Comment: Oral

Summary of Comment: 160 hours of training is not excessive, considering all the nuances and material that an adjuster needs to know. An additional six months of on-the-job training should be added.

Response to Comment: The commissioner has considered this comment and rejected it. The regulations set adequate minimum standards of training and insurers are free to provide more training to their claims adjusters.

Commentator: David Corum, AIA

Date of Comment: October 26, 2004

Type of Comment: Written

Summary of Comment: 160 hours of training is excessive. 80 hours is sufficient, with 60 in a classroom. Proposed requirements could undermine effectiveness of the training by delaying the actual application of the knowledge learned. Want to know how the department determined that 160 hour of training was the necessary level.

Response to Comment: The commissioner has considered this comment and has rejected it. The commissioner has determined that 160 hours of training with 120 of that being in a classroom is the minimum amount of training for workers' compensation claims adjusters to be able to adequately handle claims. The commissioner came to this conclusion after consulting a diverse advisory counsel about the level of existing training courses. The commissioner concluded that the majority of existing training programs that he and most people in the industry deemed to have a well-trained claims staff all had 160 hours or more of training for their employees. The majority of the existing training programs that the commissioner and many others felt had a claims staff that were not consistently performing their tasks at an adequate level had less than 160 hours of training for their employees.

Commentator: Michael McClain, CWCI

Date of Comment: October 28, 2004

Type of Comment: Oral/Written

Summary of Comment: 120 hours of training for medical-only claims adjusters is too high. Medical-only adjusters deal with only about half the required curriculum topics.

Response to Comment: The commissioner has considered this comment and has accepted it. The commissioner agrees that medical-only claims adjusters do not require 120 hours of training. He has determined that they can be adequately trained in 80 hours with 50 of those hours to be conducted in a classroom with an instructor and has reduced the required hours of training to that number.

Commentator: John Tickner, Zenith Insurance Company

Date of Comment: October 26, 2004

Type of Comment: Written

Summary of Comment: Medical only should be reduced to 80 hours because it is very limited technical job; claims adjuster training should be reduced to 120 hours. Since the regulations require 30 hours of CE regardless of full claims adjuster or medical-only, reduction in additional training is appropriate.

Response to Comment: The commissioner has considered this comment and accepted it in part and rejected it in part. The commissioner agrees that medical-only claims adjusters can be adequately trained in 80 hours and has reduced the required training to that number. However, the commissioner has determined that 160 hours of training with 120 of that being in a classroom is the minimum amount of training for workers' compensation claims adjusters to be able to adequately handle claims. Continuing education is needed to supplement the minimum training, it cannot replace the minimum necessary hours of training.

Commentator: Theo Pahos, ACIC

Date of Comment: October 28, 2004

Type of Comment: Oral/Written

Summary of Comment: 160 hours is too much. Recommend 120 hours. California has a shortage of adjusters and 160 hours would take them away from current job for four weeks, having an adverse impact on the processing of claims. The requirement is unduly burdensome for small companies with a small book of California business and a small adjusting force. This adds costs to the employment of new adjusters.

Response to Comment: The commissioner has considered this comment and rejected it. He has determined that 160 hours is the minimum number of hours required to train workers' compensation claims adjusters to adequately handle claims. Although some insurers may regard this as a burden at first, better trained claims adjusters will be more efficient and result in smoother more successful operations for insurers. Requiring better trained claims adjusters is primarily intended to benefit injured workers and employers. There should be no difference in the qualifications of claims adjusters who work for insurers that have all their business in California compared to those who work for insurers that have only a few California cases. Policyholders and injured workers need qualified claims adjusters regardless of how much business an insurer does in California.

Commentator: Theo Pahos, ACIC

Date of Comment: October 28, 2004

Type of Comment: Written

Summary of Comment: The 120 hour training requirement for medical-only claims adjusters is too burdensome and unnecessary. The standard training requirement should be reduced to 80 hours for medical-only claims adjusters.

Response to Comment: The commissioner has considered this comment and has accepted it. The commissioner agrees that medical-only claims adjusters do not need 120 hours of training and has therefore reduced the required hours of training for a medical-only claims adjuster to 80 hours with 50 of those hours to be conducted in a classroom with an instructor.

Commentator: Laurel Thurston, Republic Indemnity

Date of Comment: October 27, 2004

Type of Comment: Written

Summary of Comment: The number of hours of required training for medical-only claims adjusters (140 hours) is high in relation to the number of hours of training for a full adjuster (160 hours). Considering the level of training required for a medical-only adjuster, 80 hours seems to be adequate.

Response to Comment: The commissioner has considered this comment and has accepted it. The commissioner agrees that medical-only claims adjusters do not require 120 hours of training. He has determined that they can be adequately trained in 80 hours with 50 of those hours to be conducted in a classroom with an instructor and has reduced the required hours of training to that number.

Commentator: Christine King, DWC

Date of Comment: October 20, 2004

Type of Comment: Written

Summary of Comment: 120 hours of training for medical-only claims adjusters is too high. The requirement should be reduced to 60 hours of training (20 hours in the classroom and 40 hours of on-the-job training).

Response to Comment: The commissioner has considered this comment and has accepted it in part and rejected it in part. The commissioner agrees that medical-only claims adjusters do not need 120 hours of training but instead can be adequately trained in 80 hours and he has therefore reduced the required training to that number of hours.

Commentator: Dale Clough, St. Paul Travelers Insurance Company

Date of Comment: October 28, 2004

Type of Comment: Oral

Summary of Comment: The hour requirements to qualify for medical-only claims adjuster of 120 hours should be cut in half.

Response to Comment: The commissioner has considered this comment and has accepted it in part. The hours to qualify as a medical-only claims adjuster have been reduced to 80 hours to reflect the lesser amount subject areas to be trained in.

2592.02(b)

Commentator: Theo Pahos, ACIC

Date of Comment: October 28, 2004

Type of Comment: Oral/Written

Summary of Comment: The requirement that training be completed in 12 consecutive months is overly burdensome and unnecessary. Often disability or military leave requires an adjuster to drop out of training and resume at a later date. Recommend that the training period be increased to 24 months.

Response to Comment: The commissioner has considered this comment and has accepted it in part and rejected it in part. The commissioner has determined that the time during which the training must be completed should be extended in certain limited circumstances and has therefore amended the regulations to allow for 24 months in certain cases.

Commentator: Theo Pahos, ACIC

Date of Comment: October 28, 2004

Type of Comment: Oral/Written

Summary of Comment: 12 months is too stringent. Should add language accommodating sickness, disability or military leave to be consistent with ADA and California disability laws and required military leave.

Response to Comment: The commissioner has considered this comment and has accepted it. The regulations have been amended so that they are not inconsistent with applicable state and federal laws.

Commentator: Michael McClain, CWCI

Date of Comment: October 28, 2004

Type of Comment: Written

Summary of Comment: This section needs to accommodate interruptions due to sickness and disability to be in compliance with state and federal laws.

Response to Comment: The commissioner has considered this comment and has accepted it. The regulations have been amended so that they are not inconsistent with applicable state and federal laws.

Commentator: Laurel Thurston, Republic Indemnity

Date of Comment: October 27, 2004

Type of Comment: Written

Summary of Comment: This section needs to be adapted to accommodate for interruptions in training due to illness, disability or military service to be in compliance with state and federal laws. Suggested language provided.

Response to Comment: The commissioner has considered this comment and has accepted it. The regulations have been amended so that they are not inconsistent with applicable state and federal laws. The suggested language provided was not used in the regulations, but the same spirit and intent was achieved.

Commentator: Sharon Faggiano, Employers Compensation Insurance Company

Date of Comment: October 28, 2004

Type of Comment: Oral

Summary of Comment: It is unclear from the statute when the 12 consecutive month period begins, unless there is an underlying assumption that it is when the regulations are adopted.

Response to the Comment: The commissioner has considered this comment and has rejected it. The requirements of these regulations are effective upon their adoption and it is clear from the text of the regulations that any current claims adjusters and medical-only claims adjusters must complete any required training within 12 consecutive months from that effective date to be able to adjust claims.

2592.02(c)

Commentator: David Corum, AIA

Date of Comment: October 26, 2004

Type of Comment: Written

Summary of Comment: Courses taken within the past five years, not just two years should count. This is consistent with the five year experience exemption in 2592.01.

Response to Comment: The commissioner has considered this comment and has rejected it. The commissioner has determined that it is necessary for claims adjusters to be trained within the requirements of the regulations in order to ensure a minimum level of competency. The workers' compensation system has undergone significant changes in the past three years and more recent course content will reflect the changes.

Commentator: John Tickner, Zenith Insurance Company

Date of Comment: October 26, 2004

Type of Comment: Written

Summary of Comment: It would be patently unfair to exclude training that took place through Zenith's 160 hour course in 2002 from the required training; those individuals who took that training and have been working since would not be considered experienced claims adjusters; they would have to re-take the 160 hour program. Recommend that we extend certification to anyone who has completed full 160 hour training program within past 5 years and has continued to work since that training as a claims adjuster.

Response to Comment: The commissioner has considered this comment and rejected it. The commissioner has determined that it is necessary for claims adjusters to be trained within the requirements of the regulations in order to ensure a minimum level of competency. The workers' compensation system has undergone significant changes in the past three years and more recent course content will reflect the changes.

Commentator: Theo Pahos, ACIC

Date of Comment: October 28, 2004

Type of Comment: Oral/Written

Summary of Comment: The two year limit seems arbitrary. Should go back five years so that if a company provided 100 hours of training three years ago, adjusters would only need 60 hours now. The standard for experienced claims adjusters is five years. To be consistent, shouldn't you go back five years so that you don't have a situation where there is a gap—people who were trained three years ago and are perfectly qualified have to start from step one.

Response to Comment: The commissioner has considered this comment and rejected it. The commissioner has determined that it is necessary for claims adjusters to be trained within the requirements of the regulations in order to ensure a minimum level of competency. The workers' compensation system has undergone significant changes in the past three years and more recent course content will reflect the changes.

2592.02(d)

Commentator: Christine King, DWC

Date of Comment: October 20, 2004

Type of Comment: Written

Summary of Comment: Claims adjusters and medical-only claims adjusters should not have the same number of hours of continuing education. Medical-only claims adjusters need less and there is not enough post-designation training available for the medical-only claims adjusters.

Response to Comment: The commissioner has considered this comment and has accepted it. The number of hours of post-designation training for medical-only claims adjusters was reduced in the amended regulations.

Commentator: Michael McClain, CWCI

Date of Comment: October 28, 2004

Type of Comment: Oral/Written

Summary of Comment: Medical-only claims adjusters should get 16 hours of continuing education every two years. Self-study should be allowed.

Response to Comment: The commissioner has considered this comment and accepted it in part and rejected it in part. The number of required hours of continuing education for medical-only claims adjusters has been reduced, but not as much as requested in the comment. Self-study has not been allowed because the commissioner has determined that other types of training as defined in the regulations would be more effective in raising the competency level of claims adjusters and no more burdensome to insurers and claims adjusters.

Commentator: David J. Farber, AAICP

Date of Comment: September 28, 2004

Type of Comment: Written

Summary of Comment: 30 hours every two years is onerous and unnecessary and not required for non-workers' compensation claims adjusters. Other states require 12 hours every two years. Therefore CDI has no reason to require continuing education. But if it insists on doing it, it should be between three and 12 hours every two years.

Response to Comment: The commissioner has considered this comment and rejected it. The commissioner has determined that 30 hours of post-designation training every two years is necessary as a minimum qualification for claims adjusters to be able to handle claims adequately. California workers' compensation claims are more complicated than other insurance claims and more complicated than most other states' workers' compensation claims.

Commentator: David J. Farber, AAICP

Date of Comment: September 28, 2004

Type of Comment: Written

Summary of Comment: The regulation language should be clarified to allow credit for training by WCCP, CPCU, ARM and Certified Insurance Counselors.

Response to Comment: The commissioner has considered this comment and rejected it. The regulations do not specify a required training entity. Any of the recommended entities may qualify. There is no need to amend the regulations in order to allow the recommended entities to provide training.

2592.02(e)/(f)

Commentator: Theo Pahos, ACIC

Date of Comment: October 28, 2004

Type of Comment: Written/Oral

Summary of Comment: Insurers should not be responsible for confirming that employees of third party administrators (TPAs) actually attend the training, since the insurer is not in a position to confirm whether an employee of another company attends training classes. It would be too costly to do this. Companies should only have to certify their own employees.

Response to Comment: The commissioner has considered this comment and has rejected it. The commissioner has determined that the payor of workers' compensation

claims must be responsible for the compliance with these regulations of the claims staff working on its behalf. The commissioner has determined that it is not unduly burdensome for insurance companies and self-insured employers to monitor the compliance of all of its claims adjusters, including those employed by TPAs and other entities.

Commentator: David J. Farber, AAICP

Date of Comment: September 28, 2004

Type of Comment: Written

Summary of Comment: Although third party administrators (TPAs) are “insurers” as defined, in this section TPAs are not allowed to certify, but instead only insurers or self-insured employers can certify. Yet TPAs are controlled by the state and are subject to sufficient oversight to be capable of certifying. Insurers or self-insured employers are not in the best position to know whether claims adjusters employed by TPAs have fulfilled their requirements. Those nearest to the claims adjusters are best situated to provide certification. Therefore, TPAs should certify their own employees.

Response to Comment: The commissioner has considered this comment and has rejected it for the same reason as the comments above.

2592.02(f)/ (g)

Commentator: John Casas, JT Integrated Resources

Date of Comment: October 28, 2004

Type of Comment: Oral

Summary of Comment: We hope WCCP training, which really matches this curriculum be given credit within the designation.

Response to Comment: The commissioner has considered this comment and has rejected it because it is not necessary to amend the regulations to allow credit for the specified training credential. The regulations do not require a specific curriculum or course of training. They merely set forth minimum standards, including required subject areas, for training. The commissioner has determined that it is most efficient and effective and consistent with the enabling legislation to let insurers choose to have their own training programs or to contract with other entities to train claims adjusters.

Commentator: Michael McClain, CWCI

Date of Comment: October 28, 2004

Type of Comment: Oral

Summary of Comment: A section defining self-study should be added to the regulations.

Response to Comment: The commissioner has considered this comment and has rejected it. Self-study has not been allowed because the commissioner has determined that other types of training as defined in the regulations would be more effective in raising the competency level of claims adjusters and no more burdensome to insurers and claims adjusters.

2592.03

Commentator: David Chetcuti, AAICP

Date of Comment: October 28, 2004

Type of Comment: Oral

Summary of Comment: We need a standardized curriculum to avoid chaos and confusion and different interpretations for each insurer. We may not be ready to do this now, but we should keep an eye on it and we may find in a year or two that we need a standardized curriculum.

Response to Comment: The commissioner has considered this comment and has rejected it. The commissioner has determined that it is inappropriate to mandate a standard curriculum at this point. The commissioner has also determined that requiring a more prescriptive and uniform curriculum and training materials would directly conflict with the spirit of the statute which states “the regulations adopted pursuant to this section shall, to the greatest extent possible, encourage the use of existing private and public education, training, and certification programs.”

Commentator: Christine King, DWC

Date of Comment: October 28, 2004

Type of Comment: Written

Summary of Comment: Curriculum topics should be listed in an order that would have topics for medical only at the beginning so that subsection (b) can reference them and also indicate optional topics.

Response to Comment: The commissioner has considered this comment and has rejected it in part and accepted it in part. The topics are listed in a logical order that should not be changed. However, subsection (b) was amended to specify exactly which subjects should be studied by medical-only claims adjusters.

2592.03(c)

Commentator: Christine King, DWC

Date of Comment: October 20, 2004

Type of Comment: Written

Summary of Comment: The requirement here is vague. What type of training will be recognized—i.e. DWC seminars, CWCI, case law updates etc. Such would seem appropriate, but again there is question of “instructor” qualification.

Response to Comment: The commissioner has considered this comment and has accepted it. The regulations have been amended to clarify that post-designation training does not need to be in a classroom with an instructor.

2592.04

Commentator: Michael McClain, CWCI

Date of Comment: October 28, 2004

Type of Comment: Oral/Written

Summary of Comment: Medical bill reviewers should have proportionate post-designation training requirements—16 rather than 30 hours. Also, self-study should be allowed.

Response to Comment: The commissioner has considered this comment and has accepted it in part and rejected it in part. The regulations have been amended to reduce the post-designation training requirement for medical bill reviewers to 16 hours every two years because that is the number of hours that the commissioner has determined is sufficient for medical bill reviewers to do their job adequately. Self-study has not been allowed because the commissioner has determined that other types of training as defined in the regulations would be more effective in raising the competency level of medical bill reviewers and no more burdensome to them and to their employers.

Commentator: Kathleen Gallagher, Zurich Services Corp.

Date of Comment: September 10, 2004

Type of Comment: Written

Summary of Comment: The intent was for the commissioner to draft regulations for the training of claims adjusters, not bill reviewers. Also, the draft regulations contain subject matter that is not part of standard bill review information.

Response to Comment: The commissioner has considered this comment and has accepted it in part and rejected it in part. The legislation that mandated these regulations includes medical bill reviewers and the commissioner does not have the authority to exclude medical bill reviewers from the regulations. The commissioner agrees, however, that certain subjects that were in the initial draft of the regulations are not relevant to the work of medical bill reviewers and therefore two subject areas have been deleted from the regulations.

Commentator: David Corum, AIA

Date of Comment: October 26, 2004

Type of Comment: Written

Summary of Comment: “Ordinary Medical bill reviewers” should not be covered by the regulations. Only those bill reviewers that meet the basic definition of claims adjuster should be covered.

Response to Comment: The commissioner has considered this comment and has rejected it. The legislation that mandated these regulations includes medical bill reviewers and the commissioner does not have the authority to exclude medical bill reviewers from the regulations.

Commentator: John Tickner, Zenith Insurance Company

Date of Comment: October 26, 2004

Type of Comment: Written

Summary of Comment: This section deals only with entities that review medical bills on behalf of an insurer but does not require training for bill reviewers that are employed by an insurer.

Response to Comment: The commissioner has considered this comment and has accepted it. The regulations were amended to include medical bill reviewers who are employed by an insurer.

Commentator: Michael McClain, CWCI

Date of Comment: October 28, 2004

Type of Comment: Oral/Written

Summary of Comment: Experienced medical bill reviewers should be exempt from the training requirements.

Response to Comment: The commissioner has considered this comment and has accepted it. A definition of “experienced medical bill reviewer” has been added to the regulations and this section has been amended to exempt those defined experienced medical bill reviewers from the training requirement.

Commentator: Theo Pahos, ACIC

Date of Comment: October 28, 2004

Type of Comment: Written

Summary of Comment: Medical bill reviewers do not need 16 hours of training every year. Claims adjusters are required to get only 30 hours every two years. Bill reviewers should get only 16 hours every two years.

Response to Comment: The commissioner has considered this comment and has accepted it. The regulations were amended to change the post-designation training requirement for medical bill reviewers from 16 hours every year to 16 hours every two years.

Commentator: Cheryl Hanger, AccuMed

Date of Comment: October 22, 2004

Type of Comment: Written

Summary of Comment: Medical bill reviewers do not need 16 hours of training every year. Claims adjusters are required to get only 30 hours every two years. It seems unreasonable that medical bill reviewers would require more annual post-designation training than claims adjusters who require more knowledge to do their job.

Response to Comment: The commissioner has considered this comment and has accepted it. The regulations were amended to change the post-designation training requirement for medical bill reviewers from 16 hours every year to 16 hours every two years.

Commentator: John Tickner, Zenith Insurance Company

Date of Comment: October 26, 2004

Type of Comment: Written

Summary of Comment: More continuing education is required for medical bill reviewers than for claims adjusters.

Response to Comment: The commissioner has considered this comment and has accepted it. The regulations were amended to change the post-designation training requirement from 16 hours every year to 16 hours every two years, thus appropriately making the requirement for medical bill reviewers less than that for claims adjusters.

Commentator: Jennifer Lapinsky, Concentra

Date of Comment: October 27, 2004

Type of Comment: Written

Summary of Comment: The training requirement should only apply to newly employed bill reviewers.

Response to Comment: The commissioner has considered this comment and rejected it. The commissioner has determined that all medical bill reviewers except for experienced medical bill reviewers require at least 40 hours of training in order to adequately fulfill their job duties.

Commentator: Kathleen Gallagher, Zurich Services Corp.

Date of Comment: September 10, 2004

Type of Comment: Written

Summary of Comment: How is certification of medical bill reviewers to be documented and proven? Is the state providing direction on content?

Response to Comment: The commissioner has considered this comment and has accepted it. The regulations have been amended to include an Annual Certification of Medical Bill Reviewers, a Medical Bill Reviewer Designation indicating that a medical bill reviewer has been trained and also an Experienced Medical Bill Reviewer Designation.

Commentator: Kathleen Gallagher, Zurich Services Corp.

Date of Comment: September 10, 2004

Type of Comment: Written

Summary of Comment: Topics 3, 4, and 5 are not at all relevant to the work of medical bill reviewers and should be deleted.

Response to Comment: The commissioner has considered this comment and has accepted it in part and rejected it in part. The commissioner agrees that topics 4 and 5 are not relevant to the work of a medical bill reviewer and has deleted them from the list of required subjects. However, the commissioner has determined that topic 3 “workers’ compensation benefit provisions” is relevant to the work of medical bill reviewers and has therefore retained the topic in the regulations.

Commentator: Theo Pahos, ACIC

Date of Comment: October 28, 2004

Type of Comment: Written

Summary of Comment: Topics 3, 4, and 5 are not at all relevant to the work of medical bill reviewers and should be deleted.

Response to Comment: The commissioner has considered this comment and has accepted it in part and rejected it in part. The commissioner agrees that topics 4 and 5 are not relevant to the work of a medical bill reviewer and has deleted them from the list of required subjects. However, the commissioner has determined that topic 3 “workers’ compensation benefit provisions” is relevant to the work of medical bill reviewers and has therefore retained the topic in the regulations.

Commentator: Cheryl Hanger, AccuMed

Date of Comment: October 22, 2004

Type of Comment: Written

Summary of Comment: Topics 3, 4, 5, 8, and 10 should be removed from section 2592.04(e) as they are not directly related to the actual process of reviewing medical bills.

Response to Comment: The commissioner has considered this comment and has accepted it in part and rejected it in part. The commissioner agrees that topics 4 (cumulative trauma) and 5 (WCAB procedures, forms, hearings, and penalties) are not relevant to the work of a medical bill reviewer and has deleted them from the list of required subjects. However, the commissioner has determined that topics 3 (workers' compensation benefit provisions), 8 (utilization guidelines), and 10 (liens) are relevant to the work of medical bill reviewers and has therefore retained the topic in the regulations.

Commentator: Christine King, DWC

Date of Comment: October 20, 2004

Type of Comment: Written

Summary of Comment: Topics 4 and 5 do not seem relevant to bill review jobs.

Response to Comment: The commissioner has considered this comment and has accepted it. The commissioner agrees that topics 4 and 5 are not relevant to the work of a medical bill reviewer and has deleted them from the list of required subjects.

Commentator: Jenifer Lapinsky, Concentra

Date of Comment: October 27, 2004

Type of Comment: Written

Summary of Comment: "Cumulative trauma" and "medical evidence" should not be required topics for bill reviewers.

Response to Comment: The commissioner has considered this comment and has accepted it in part and rejected it in part. The commissioner agrees that "cumulative trauma" is not relevant to the work of a medical bill reviewer and has deleted it from the list of required subjects. However, the commissioner has determined that "medical evidence" is relevant to the work of medical bill reviewers and has therefore retained the topic in the regulations.

Commentator: Jenifer Lapinsky, Concentra

Date of Comment: October 27, 2004

Type of Comment: Written

Summary of Comment: Topic 2 should specify all *California* fee schedules.

Response to Comment: The commissioner has considered this comment and has accepted it. The regulations were amended to specify that the type of fee schedules that were to be studied were those applicable in California.

Commentator: John Tickner, Zenith Insurance Company

Date of Comment: October 26, 2004

Type of Comment: Written

Summary of Comment: Cumulative trauma and workers' compensation benefits are not relevant and should not be included.

Response to Comment: The commissioner has considered this comment and has accepted it in part and rejected it in part. The commissioner agrees that "cumulative

trauma” is not relevant to the work of a medical bill reviewer and has deleted it from the list of required subjects. However, the commissioner has determined that “medical evidence” is relevant to the work of medical bill reviewers and has therefore retained the topic in the regulations.

Commentator: Sheila Garcia, Stratacare

Date of Comment: October 4, 2004

Type of Comment: Written

Summary of Comment: Completion of the training should be in a 12 month period.

Response to Comment: The commissioner has considered this comment and has accepted it. The regulations were amended to specify that training must be completed within a 12 month period.

Commentator: Sheila Garcia, Stratacare

Date of Comment: October 4, 2004

Type of Comment: Written

Summary of Comment: There should be a provision to use courses taken 2 years prior, as in 2592.02(c).

Response to Comment: The commissioner has considered this comment and has accepted it in part and rejected it in part. The commissioner has determined that medical bill reviewers need not be treated exactly like claims adjusters because their work is somewhat different. The commissioner has also determined that medical bill reviewers who are not otherwise exempt may use classes or courses taken within one year before the effectiveness of these regulations to satisfy the curriculum requirement.

Commentator: Cheryl Hanger, AccuMed

Date of Comment: October 22, 2004

Type of Comment: Written

Summary of Comment: Clarify if any training on any of the required topics for medical bill reviewers done prior to January 1, 2005 can be applied toward the new designation requirements.

Response to Comment: The commissioner has considered this comment and has accepted it in part and rejected it in part. The commissioner has determined that medical bill reviewers need not be treated exactly like claims adjusters because their work is somewhat different. The commissioner has also determined that medical bill reviewers who are not otherwise exempt may use classes or courses taken within one year before the effectiveness of these regulations to satisfy the curriculum requirement.

Commentator: Sheila Garcia, Stratacare

Date of Comment: October 4, 2004

Type of Comment: Written

Summary of Comment: There is no provision prohibiting a medical bill review entity from employing untrained people, unlike 2592.02(g).

Response to Comment: The commissioner has considered this comment and has accepted it. The regulations were amended to specify that only trained or experienced medical bill reviewers may review workers’ compensation medical bills.

Commentator: Sheila Garcia, Stratacare

Date of Comment: October 4, 2004

Type of Comment: Written

Summary of Comment: Omit requirement for these curriculum topics: cumulative trauma and workers' comp benefit provisions.

Response to Comment: The commissioner has considered this comment and has accepted it in part and rejected it in part. The commissioner agrees that "cumulative trauma" is not relevant to the work of a medical bill reviewer and has deleted it from the list of required subjects. However, the commissioner has determined that "workers' compensation benefit provisions" is relevant to the work of medical bill reviewers and has therefore retained the topic in the regulations.

Commentator: Kathleen Gallagher

Date of Comment: September 10, 2004

Type of Comment: Written

Summary of Comment: Medical bill reviewers should not have certification criteria applied to them. No other state requires it. The following specific required topics are not necessary: workers' compensation benefit provisions; cumulative trauma; WCAB procedures; medical evidence; liens.

Response to Comment: The commissioner has considered this comment and has accepted it in part and rejected it in part. The commissioner does not have the authority to exclude medical bill reviewers from the certification requirements of the regulations. The commissioner has determined that cumulative trauma and WCAB procedures are not necessary topics for the training of medical bill reviewers and has amended the regulations to omit those topics. The commissioner has also determined that the other specified topics are necessary for the training of medical bill reviewers.

Commentator: Sheila Garcia, Stratacare

Date of Comment: October 4, 2004

Type of Comment: Written

Summary of Comment: There should be a mention of an "experienced medical bill reviewer." This should be someone who has at least three years of on-the-job experience reviewing California workers' compensation bills during the past five years.

Response to Comment: The commissioner has considered this comment and has accepted it. The regulations have been amended to include a definition of "experienced medical bill reviewer" who has at least three years of on-the-job experience reviewing medical bills within the past five years.

2592.05

General Comment: "Accreditation" should be changed to "Certification".

Response to Comment: "Accreditation" was changed to "Certification" in the first 15-day notice period. However, because of concerns at the Office of Administrative Law (OAL) over the definition of the word "certify" and the use of the word "certificate" for documents that did not need to be signed under the penalty of perjury, the title of this section was further amended to "Designation".

Commentator: Laurel Thurston, Republic Indemnity

Date of Comment: October 27, 2004

Type of Comment: Written

Summary of Comment: The word “accreditation” is not defined or used in other parts of the regulations. Throughout the regulations, the word “certify” is used and is also defined. It is suggested the word “accreditation” be deleted and the word “certify” be substituted.

Response to Comment: The commissioner has considered this comment and has accepted it in part and rejected it in part. The word “certify” was used to replace “accreditation” in the first 15-day notice period. However, because of concerns at OAL over the definition of the word “certify” and the use of the word “certificate” for documents that did not need to be signed under the penalty of perjury, the commissioner chose to use the word “designation”. The word “accreditation” was not used anywhere else in the regulations except for the initial title of this section.

Commentator: Theo Pahos, ACIC

Date of Comment: October 28, 2004

Type of Comment: Written

Summary of Comment: This section should be re-titled “Certification” since there is no accreditation of the training programs.

Response to Comment: The commissioner has considered this comment and rejected it. This section was re-titled “Certification” during the first 15-day notice period. However, because of concerns at OAL over the definition of the word “certify” and the use of the word “certificate” for documents that did not need to be signed under the penalty of perjury, the commissioner chose to use the word “designation” in titling this section.

Commentator: Michael McClain, CWCI

Date of Comment: October 28, 2004

Type of Comment: Oral/Written

Summary of Comment: This section should be re-titled “Certificate of Completion”.

Response to Comment: The commissioner has considered this comment and rejected it. This section was re-titled “Certification” during the first 15-day notice period. However, because of concerns at OAL over the definition of the word “certify” and the use of the word “certificate” for documents that did not need to be signed under the penalty of perjury, the commissioner chose to use the word “designation” in titling this section.

Commentator: Laurel Thurston, Republic Indemnity

Date of Comment: October 27, 2004

Type of Comment: Written

Summary of Comment: The regulations should specify the “form and manner” of the designation forms to assure compliance and avoid ambiguity and confusion.

Response to Comment: The commissioner has considered this comment and has accepted it. The regulations were amended to include designation forms.

Commentator: Michael McClain, CWCI

Date of Comment: October 28, 2004

Type of Comment: Oral/Written

Summary of Comment: The regulations should specify the “form and manner” of the designation forms to assure compliance and avoid confusion.

Response to Comment: The commissioner has considered this comment and has accepted it. The regulations were amended to include designation forms.

Commentator: Theo Pahos, CWCI

Date of Comment: October 28, 2004

Type of Comment: Oral/Written

Summary of Comment: Designation forms should be issued by the employer of the adjuster who might not always be an insurer. Recommend including third-party administrators in this section.

Response to Comment: The commissioner has considered this comment and has accepted it. The regulations were amended to include designation forms that may be provided by an insurer, a self-insurer, or a third-party administrator.

Commentator: David J. Farber, AAICP

Date of Comment: October 28, 2004

Type of Comment: Oral/Written

Summary of Comment: CDI should include a sample designation form to reduce uncertainty.

Response to Comment: The commissioner has considered this comment and has accepted it. The regulations were amended to include designation forms.

Commentator: Theo Pahos, ACIC

Date of Comment: October 28, 2004

Type of Comment: Oral/Written

Summary of Comment: Proof of training should be provided only when the Administrative Director or the Insurance Commissioner makes a finding that the complaint warrants a need to provide proof of training.

Response to Comment: The commissioner has considered this comment and has rejected it. The commissioner has determined that there is no need to withhold evidence of proof of training from employers or injured workers if they request it and that it would not be unduly burdensome on insurers to provide such proof of training upon request.

Commentator: David J. Farber, AAICP

Date of Comment: September 28, 2004

Type of Comment: Written

Summary of Comment: The requirement of providing a copy of the claims adjuster’s designation form should be deleted. This requirement imposes tremendous burdens and duplicates information that must be publicly available on CDI website. This is not a requirement found in statutes or regulations governing non-workers’ comp adjusters.

Response to Comment: The commissioner has considered this comment and has rejected it. The commissioner has determined that providing a designation form to policyholders and injured workers is not an undue burden on insurers or claims adjusters and is valuable information that consumers should have access to. Individual designation

forms are not required by the regulations to be posted on the Department of Insurance website. Requirements for claims adjusters in other lines of insurance are irrelevant since workers' compensation insurance is uniquely complex and the legislature has decided that special minimum standards of training and experience should apply to them.

2592.06

Commentator: Theo Pahos, ACIC

Date of Comment: October 28, 2004

Type of Comment: Oral

Summary of Comment: Eight years is too long to keep records. Maintenance of records should be kept to the period of time between market conduct or claims examinations. There is no need to keep records beyond the date when CDI has reviewed and confirmed compliance with these regulations. Five years would be sufficient.

Response to Comment: The commissioner has considered this comment and has accepted it in part and rejected it in part. The record retention requirement in the regulations was changed from maintaining records by an insurer of an employed claims adjuster from "eight years after the adjuster has completed the training" to "as long as the claims adjuster, medical-only claims adjuster, or medical bill reviewer is in (the insurers) employ or acting on its behalf and thereafter for five (5) years." The requirement of record retention is not only for the purpose of CDI review for compliance. Retaining records will also allow those who are involved in workers compensation claims access to valuable information about the qualifications of claims adjusters and to allow the claims adjusters themselves and other insurers to obtain copies to confirm qualifications for future employment.

Commentator: Jennifer S. Lapinsky, Concentra

Date of Comment: October 27, 2004

Type of Comment: Written

Summary of Comment: Records should be maintained for three years after the adjuster or bill reviewer has terminated with employer, thus having the same time frame as required for retention of records by the U.S. Fair Labor Standards Act.

Response to Comment: The commissioner has considered this comment and has rejected it. There is no legal requirement that California standards for record retention in this case be the same as federal standards. The purposes of the federal law and of the legislation enabling these regulations is not the same and the time requirements need not be the same. The commissioner has determined that retention for five years is necessary and not unduly burdensome.

Commentator: Christine King, DWC

Date of Comment: October 20, 2004

Type of Comment: Written

Summary of Comment: There should be a penalty for failure to comply with this regulation—can the Department of Insurance or the Division of Workers' Compensation's Audit Unit enforce or cite for non-compliance with these regulations?

Response to Comment: The commissioner has considered this comment and has rejected it. There is no need to create penalties for failure to comply with these regulations since other penalty provisions available to the commissioner or the administrative director apply to these regulations.

Commentator: Sheila Garcia

Date of Comment: October 4, 2004

Type of Comment: Written

Summary of Comment: Medical billing entities should be required to maintain records pertaining to the training of medical bill reviewers.

Response to Comment: The commissioner has considered this comment and has accepted it in part and rejected it in part. The regulations have been amended to require insurers to maintain records on all claims adjusters, medical-only claims adjusters, and medical bill reviewers in its employ or acting on its behalf, notwithstanding where they were trained or by whom they were trained. Insurers may rely on medical bill review entities to train and issue designation forms to medical bill reviewers. However, in order to maintain consistency with the implementing statute, the insurers must ultimately certify to the commissioner that the employees acting on its behalf, including outsourced medical bill reviewers, meet the minimum training requirements established by these regulations.

Commentator: David J. Farber, AAICP

Date of Comment: September 28, 2004

Type of Comment: Written

Summary of Comment: Instead of the records being produced by the entity employing the adjuster, it should be the adjuster himself who produces certified copies of his or her own training records.

Response to Comment: The commissioner has considered this comment and has rejected it. The commissioner has determined that the responsibility for providing records should remain with the insurer, who has a legal relationship both with a policyholder and an injured worker.

Commentator: David J. Farber, AAICP

Date of Comment: September 28, 2004

Type of Comment: Written

Summary of Comment: Current employers should be able to access training records pursuant to 2592.07. Therefore the training records should be included in the list provided under 2592.06(b)

Response to Comment: The commissioner has considered this comment and has rejected it. The regulations allow all employers to access sufficient information about the number of trained and experienced claims adjusters for each insurer on the Department of Insurance website as well as to request an individual claims adjuster's designation forms. The commissioner has determined that the privacy rights of claims adjusters and the proprietary nature of some curricula would prevent him from providing any more information to the public.

Commentator: David J. Farber, AAICP

Date of Comment: September 28, 2004

Type of Comment: Written

Summary of Comment: If CDI insists that records be provided to new insurers through means other than web posting, then the claims adjuster himself should be responsible.

Response to Comment: The commissioner has considered this comment and has rejected it. The commissioner has determined that responsibility for transmission of the relevant records should reside with the entity that originally designated the claims adjuster or the medical bill reviewer. This will greatly lessen the possibility of fraudulent designations being presented to an insurer hiring a claims adjuster or medical bill reviewer.

Commentator: Dale Clough, St. Paul Travelers

Date of Comment: October 28, 2004

Type of Comment: Oral

Summary of Comment: The adjusters should do their own tracking and be responsible for doing their own tracking, particularly because of temps.

Response to Comment: The commissioner has considered this comment and has rejected it in part and accepted it in part. Insurers as defined are responsible for designation and they must keep records of the training of claims adjusters in order to properly fulfill their designation function. However, the commissioner has reviewed the regulations carefully keeping in mind that some claims adjusters may be temporary workers employed by entities that are not defined as insurers. The regulations were amended to clarify that these “temps” are subject to the same training requirements as all other claims adjusters.

Commentator: Dale Clough, St. Paul Travelers

Date of Comment: October 28, 2004

Type of Comment: Written

Summary of Comment: Keeping records for eight years is too much. About half that would be ok.

Response to Comment: The commissioner has considered this comment and has accepted it in part. The record retention requirement in the regulations was reduced from eight years to the time the person is employed by or working on behalf of the insurer and only five years thereafter.

2592.07

Commentator: Theo Pahos, ACIC

Date of Comment: October 28, 2004

Type of Comment: Written

Summary of Comment: Requires submission of all documents described in 2592.07(b) but there is no such subsection. Posting adjuster’s addresses threatens their privacy.

Response to Comment: The commissioner has considered this comment and has accepted it. The regulations were amended to specify exactly what type of information will be posted on the Department of Insurance website. The specific information to be

posted was carefully selected to protect the privacy of claims adjusters while providing sufficient information to consumers to make appropriate choices among workers' compensation insurers. Adjuster's addresses will not be posted and the integrity of their privacy will be maintained.

Commentator: Sheila Garcia, Stratacare

Date of Comment: October 4, 2004

Type of Comment: Written

Summary of Comment: This section makes reference to 2592.07(b), which does not exist. Assuming this refers to 2592.06(b), medical bill review entities should not be included in this section.

Response to Comment: The commissioner has considered this comment and has accepted it in part and rejected it in part. The commissioner has determined that it is necessary to include information regarding medical bill reviewers in the submission of documents from insurers because it is consistent with both the implementing statute – Insurance Code section 11761 – and the treatment of medical bill reviewers throughout the regulations. Consequently, paragraph (b) was added to the regulations under 2592.07 specifying reporting requirements regarding medical bill reviewers by insurers.

Commentator: David J. Farber, AAICP

Date of Comment: September 28, 2004

Type of Comment: Written

Summary of Comment: No subsection (b) is provided. There should be and suggested specific language is provided.

Response to Comment: The commissioner has considered this comment and has accepted it in part and rejected it in part. The regulations were amended to clarify exactly which documents must be submitted to the commissioner.

Commentator: David J. Farber, AAICP

Date of Comment: September 28, 2004

Type of Comment: Written

Summary of Comment: Privacy issues would say that only minimal adjuster information be made public. If more required, CDI should address in its regulations how it will accommodate privacy issues.

Response to Comment: The commissioner has considered this comment and has accepted it. The regulations were amended to specify exactly what type of information will be posted on the Department of Insurance website. The specific information to be posted was carefully selected to protect the privacy of claims adjusters while providing sufficient information to consumers to make appropriate choices among workers' compensation insurers.

Commentator: Michael McClain, CWCI

Date of Comment: October 28, 2004

Type of Comment: Oral/Written

Summary of Comment: Add language: "In no event shall the adjuster's private residence address or telephone be published."

Response to Comment: The commissioner has considered this comment and has accepted it in part and rejected it in part. The regulations were amended to specify exactly what type of information will be posted on the Department of Insurance website. The specific information to be posted was carefully selected to protect the privacy of claims adjusters while providing sufficient information to consumers to make appropriate choices among workers' compensation insurers. It is not necessary to exclude the private address and phone number of a claims adjuster from the information to be published because that information has been specified in the amended regulations and it does not include the referenced personal information.

Commentator: Laurel Thurston, Republic Indemnity

Date of Comment: October 27, 2004

Type of Comment: Written

Summary of Comment: It is strongly urged that the adjuster's home address and phone number never be published on the Department of Insurance website. Publication would be a violation of the adjuster's privacy.

Response to Comment: The commissioner has considered this comment and has accepted it. The regulations were amended to specify exactly what type of information will be posted on the Department of Insurance website. The specific information to be posted was carefully selected to protect the privacy of claims adjusters while providing sufficient information to consumers to make appropriate choices among workers' compensation insurers.

ADDITIONAL WRITTEN COMMENTS RELATED TO THE NOTICE OF AVAILABILITY OF REVISED TEXT DATED MARCH 4, 2005

General

Commentator: Jeffrey White, Acacia Pacific Holdings

Date of Comment: May 28, 2005

Type of Comment: Written

Summary of Comment: Policies and procedures should be developed to help enforce compliance with the regulations. Audits or other investigative procedures need to be added to ensure sufficient authority supports enforcement of the training regulations.

Response to Comment: The commissioner has considered this comment and rejected it. He has determined that the statute does not give the commissioner direct authority to create new enforcement mechanisms and penalties. The Department will utilize existing tools to ensure compliance with the regulations. Audits will be performed under market conduct exams with review of information to support certifications.

Commentator: Jeffrey White, Acacia Pacific Holdings

Date of Comment: May 28, 2005

Type of Comment: Written

Summary of Comment: The new training regulations should be made clearer. Lack of clarity could lead to confusion and unintentional non-compliance.

Response to Comment: The commissioner has considered this comment and rejected it. Considering the complex subject matter, the commissioner's staff has carefully developed the language for these regulations to make it as clear as possible. The nature of the comments on the regulations indicates that the regulations are clear and understandable.

2592.01(f)

Commentator: Kathleen G. Bissell, Liberty Mutual

Date of Comment: March 21, 2005

Summary of Comment: The definition should be expanded to include managers who participate in claims handling on an ad hoc basis. Special examiners should also be considered "experienced." Should also include those who took the exam but been promoted or moved out of state but who provide input on claims.

Response to Comment: The commissioner has considered this comment and has rejected it. The definition in the regulations was very carefully crafted to allow necessary flexibility to insurers while at the same time preserving the principle that claims should be adjusted only by those knowledgeable about the detailed requirements of claims adjusting. Occasional involvement with claims adjusting does not in itself qualify an individual to adjust claims.

2592.01(h)/(i)

Commentator: Jeffrey White, Acacia Pacific Holdings

Date of Comment: May 28, 2005

Type of Comment: Written

Summary of Comment: Instructors and trainers should be certified. Requirements authorizing people to teach workers' compensation courses are broad. Certifying instructors would strengthen the overall quality and consistency of education.

Response to Comment: The commissioner has considered this comment and rejected it. He has determined that the current definition of instructor is sufficient to raise the level of instruction, ensure quality instructors, and flexible enough to allow for people knowledgeable about specific workers' compensation issues (such as attorneys, medical administrators and fraud experts) to train students. The current definition is also consistent with the implementing statute which encourages the regulations to utilize existing resources to the greatest extent possible. Furthermore, there is no mandate in the implementing statute to allow the commissioner to establish a certification process for instructors.

2592.01(i)

Commentator: Sue Hutchings, McDermott-Clawson

Date of Comment: May 2, 2005

Summary of Comment: Instructors and adjusters should be tested to measure their competence rather than the time logged in classes. This is the most widely accepted standard for assessing students and teachers in almost all other forms of education.

Response to Comment: The commissioner has considered this comment and has rejected it. The commissioner has determined that the current definition of instructor is adequate and that an individual should demonstrate a certain level of experience in the California workers' compensation system in order to qualify as an instructor. With regards to claims adjusters, a claims adjuster can pass the self-insurance administrator's exam in combination with experience as a means of being designated a claims adjuster.

Commentator: Kathleen Bissell, Liberty Mutual

Date of Comment: March 21, 2005

Summary of Comment: Individuals should be allowed to be subject matter experts working under appropriate supervision even if they do not have five years of experience in California claims handling.

Response to Comment: The commissioner has considered this comment and has rejected it. The regulations already allow any person knowledgeable about California workers' compensation to instruct under the supervision of an instructor, as defined.

Commentator: Michael McClain, CWCI

Date of Comment: March 21, 2005

Summary of Comment: It would be unreasonable to require certain highly qualified experts who do not meet the qualifications to be an instructor to have to be supervised by another instructor who does meet the qualifications. The definition of instructor should be broadened.

Response to Comment: The commissioner has considered this comment and has rejected it. The commissioner has determined that an instructor who is responsible for training claims adjusters must meet the minimum qualifications that are set forth in the regulations. He has also determined that there is enough flexibility in the regulations to allow any type of subject matter expert to help train claims adjusters. It is not unreasonable to require an expert who does not qualify as an instructor to be supervised by an instructor, as defined. Any further broadening of the standards for an instructor is unnecessary and would risk putting claims adjusters' training under the supervision of unqualified people.

2592.01(k)

Commentator: Steve Cattolica, AdvoCal

Date of Comment: March 11, 2005

Summary of Comment: This definition must be explicitly inclusive of entry level data personnel. Individuals involved in quality assurance must also be included.

Response to Comment: The commissioner has considered this comment and has rejected it. The current regulations clearly include anyone who "reviews or adjusts" medical bills, whether the individual works for an insurer or any other entity. The regulations thus include the individuals that the commentator wishes to be included.

Note: the first letter at the end of the subparagraph in the following comments regarding section 2592.01 refer to the original text; the second letter refers to the renumbered text in the revised regulations.

2592.01 (k)/ (n)

Commentator: Michael McClain, CWCI

Date of Comment: March 21, 2005

Summary of Comment: Should make clear that post-designation training applies to medical-only claims adjusters and medical bill reviewers.

Response to Comment: The commissioner has considered this comment and has accepted it. The definition was changed to clarify that such training applies to instruction given to medical-only claims adjusters and medical bill reviewers.

2592.02(a)

Commentator: David Farber, AAICP

Date of Comment: March 17, 2005

Type of Comment: Written

Summary of Comment: The 160-hour training for claims adjusters is too burdensome and presents a substantial time burden on the trainees. The training should be shorter.

Response to Comment: The commissioner has considered this comment and has rejected it. The commissioner has determined that 160 hours of training with 120 of that being in a classroom is the minimum amount of training for workers' compensation claims adjusters to be able to adequately handle claims. The commissioner came to this conclusion after consulting a diverse advisory counsel about the level of existing training courses. The commissioner concluded that the majority of existing training programs that he and most people in the industry deemed to have a well-trained claims staff all had 160 hours or more of training for their employees. The majority of the existing training programs that the commissioner and many others felt had a claims staff that were not consistently performing their tasks at an adequate level had less than 160 hours of training for their employees.

Commentator: David J. Farber, AAICP

Date of Comment: March 17, 2005

Type of Comment: Written

Summary of Comment: Classroom training should not be required. Other non-workers' compensation claims adjusters are not required to do classroom training, but instead may earn designation/certification through hours worked in the insurance field and not training.

Response to Comment: The commissioner has considered this comment and rejected it. The commissioner has already responded to this comment from this commentator in a previous comment period. The commissioner has determined that the work of workers' compensation claims adjusters is more complex than most other insurance claims handling and that formal training is required to meet the minimum standards contemplated by the legislation enabling these regulations.

Commentator: Kathleen Bissell, Liberty Mutual

Date of Comment: March 21, 2005

Summary of Comment: The requirement that at least 120 hours of claims adjuster training should be done in a classroom with an instructor should be changed and reduced to 80 hours in a classroom with an instructor. There are other very valuable forms of training and more flexibility is needed.

Response to Comment: The commissioner has considered this comment and has rejected it. The commissioner has determined that 120 hours of classroom training is the minimum necessary to ensure that claims adjusters can do their work adequately. Insurers are free to add more hours to the curriculum to allow for other training modalities.

2592.02(b)

Commentator: Kathleen Bissell, Liberty Mutual

Date of Comment: March 21, 2005

Summary of Comment: The reference to “consecutive” hours of training should be removed.

Response to Comment: The commissioner has considered this comment and has rejected it. The word “consecutive” here refers not to hours of training, but is rather a limitation on the number of months during which the training program must be completed. Allowances have also been made for leaves of absence in compliance with federal and state law.

Commentator: David Mitchell, Republic Indemnity Insurance Company

Date of Comment: March 16, 2005

Summary of Comment: The requirement that training be completed within 24 months violates three federal laws and should be changed to allow for completion within six months after the end of certain types of leave.

Response to Comment: The commissioner has considered this comment and has rejected it. The time limitation for completion of training is necessary to ensure that claims adjusters and medical bill reviewers are able to adequately fulfill their responsibilities. This requirement relates only to training and does not discriminate against those who have been absent on military leave in terms of reemployment, retention in employment, promotion, or any benefit of employment. In cases where training must begin again, an individual returning from military service will be more likely to be successful in his or her position as claims adjuster or medical bill reviewer when he or she is able to undergo a complete training program.

Commentator: Thelma Zuniga, County of Santa Clara

Date of Comment: March 8, 2005

Summary of Comment: The 12 month requirement during which training must be completed could cause significant hardship for some employers as it would require time away from the office to attend training classes. Consideration should be given to extending this to 24 months.

Response to Comment: The commissioner has considered this comment and has rejected it. The commissioner has determined that 12 months is a reasonable period of time within which to complete the required training and is not unduly burdensome.

Commentator: Michael McClain, CWCI

Date of Comment: March 21, 2005

Summary of Comment: The 24 month requirement will result in disadvantage and discrimination. 24 months is inadequate to accommodate interruptions due to leave permitted by state and federal law. The time to complete the training should be suspended during the period of the leave.

Response to Comment: The commissioner has considered this comment and has rejected it. The time limitation for completion of training is necessary to ensure that claims adjusters and medical bill reviewers are able to adequately fulfill their responsibilities. This requirement relates only to training and does not discriminate against those who have been absent on military leave in terms of reemployment, retention in employment, promotion, or any benefit of employment. In cases where training must begin again, an individual returning from military service will be more likely to be successful in his or her position as claims adjuster or medical bill reviewer when he or she is able to undergo a complete training program.

2592.02(c)

Commentator: David Mitchell, Republic Indemnity Insurance Company

Date of Comment: March 16, 2005

Summary of Comment: This provision needlessly disqualifies training more than two years before the effective date of the regulations. Goal of regulations is assuring competency. Disqualifying previous training does not promote that goal.

Response to Comment: The commissioner has considered this comment and has accepted it in part and rejected it in part. There have been numerous highly significant changes in the workers' compensation system and it is necessary for those claims adjusters who are not exempt from the training requirement to receive relatively recent training. The commissioner has extended the retroactive training date from two years to three years because of the delayed time in implementing these regulations. The commissioner has determined that going back three years before the effective date of the regulations, which is consistent with the post-reform period, is reasonable, necessary and not unduly burdensome to insurers and claims adjusters.

Commentator: David J. Farber, AAICP

Date of Comment: March 17, 2005

Type of Comment: Written

Summary of Comment: The Department should include credit for training by WCCP, CPCU, ARM and Certified Insurance Counselors toward fulfillment of the educational training requirements. Specific language proposed.

Response to Comment: The commissioner has considered this comment and rejected it. The proposed regulations already allow this as long as the course work fits the curriculum requirements in 2592.03. As 2592.02(c) in the proposed regulations states, "Any classes or courses taken within three (3) years before the effective date of these regulations that

satisfy the curriculum requirement may be used to meet the hourly requirements upon verification by the student to the insurer of the type of course taken, the course of study, the date or dates taken, the person or organization providing the class or course, and the number of hours taken.”

Commentator: Michael McClain, CWCI

Date of Comment: March 21, 2005

Summary of Comment: Two year limit will result in unnecessary and unintended coverage anomalies. Qualifying training should include the recent wave of changes but also a thorough foundation for claims procedures before the changes.

Response to Comment: The commissioner has considered this comment and has accepted it. The commissioner has extended the retroactive training date from two years to three years because of the delayed time in implementing these regulations. The commissioner has determined that going back three years before the effective date of the regulations is reasonable, necessary and not unduly burdensome to insurers and claims adjusters. It also remains consistent with requiring training in the post-reform period.

2592.02(d)

Commentator: Dennis Knots, Moreno Valley, California

Date of Comment: March 5, 2005

Summary of Comment: In order to get credit for post-designation training for attending a seminar, workshop or other informational meeting, a claims adjuster would have to verify that each speaker was qualified as an instructor, as defined.

Response to Comment: The commissioner has considered this comment and has rejected it. The regulations were revised to clearly state that post-designation training need not be in a classroom with an instructor. Thus, credit may be given at seminars, workshops, or other informational meetings even though the speaker or speakers at those meetings would not necessarily qualify as an instructor, as defined.

Commentator: David Chetcuti, ACCA

Date of Comment: March 8, 2005

Summary of Comment: Retroactive credit should be given for classes and courses attended for two years prior to January 1, 2005, as originally intended in the regulations.

Response to Comment: The commissioner has considered this comment and has accepted it in part and rejected it in part. Retroactive courses and classes will be credited if taken within three years prior to the effective date of these regulations with proper documentation.

Commentator: David J. Farber, AAICP

Date of Comment: March 17, 2005

Type of Comment: Written

Summary of Comment: The continuing education requirements should be eliminated. Many other non-workers' compensation adjusters do not have continuing education requirements and only 10 other states have continuing education requirements of this

sort. If the department decides to include continuing education requirements it should reduce the hours to between 3 and 12 hours every 2 years.

Response to Comment: The commissioner has considered this comment and rejected it. The commissioner has determined that 30 hours of post-designation training every two years (and 20 hours every two years for medical-only claims adjusters) is not burdensome since it amounts to 3 or 4 days of training over a two year period. Considering all the legal and legislative changes that have taken place in this industry and continue to take place, the commissioner had determined that ongoing education of claims adjusters on the changes in the law is imperative as a minimum qualification to be able to handle claims adequately.

Commentator: David J. Farber, AAICP

Date of Comment: March 17, 2005

Type of Comment: Written

Summary of Comment: The regulation language should be clarified to allow credit for training by WCCP, CPCU, ARM and Certified Insurance Counselors.

Response to Comment: The commissioner has considered this comment and rejected it. The commissioner has already answered this comment from this commentator in an earlier comment period. There is no need to amend the regulations to allow the recommended entities to provide training. The regulations do not specify a required training entity. Any of the recommended entities may qualify. Credit for training by these entities is not necessarily excluded if it is done after the effective date of the regulations and meets the other criteria laid out in 2592.02(e).

Commentator: Michael McClain, CWCI

Date of Comment: March 21, 2005

Summary of Comment: Self-study should be allowed.

Response to Comment: The commissioner has considered this comment and has rejected it. The regulations already allow sufficient flexibility for a variety of different types of programs to qualify for post-designation training. It should be noted that such training need not be in a classroom, nor is an instructor, as defined, required. It is the responsibility of each insurer to monitor the post-designation training that it approves to make sure that it is effective and efficient.

2592.02(e)

Commentator: Steve Cattolica, AdvoCal

Date of Comment: March 11, 2005

Summary of Comment: There appear to be no penalties for non-designated adjusters or bill reviewers.

Response to Comment: The commissioner has considered this comment and has rejected it. The responsibility for designating claims adjusters rests with the insurer as defined and the insurer is subject to penalties for violations of law and regulations, including the requirement of authorizing only trained or experienced claims adjusters to adjust its claims.

2592.02(f)

Commentator: Michael McClain, CWCI

Date of Comment: March 21, 2005

Summary of Comment: The revision of this subsection and 2592.04(e) are ambiguous and seem to limit an insurer's option to doing all the training directly or by a single outside trainer.

Response to Comment: The commissioner has considered this comment and has rejected it. Training that is done under the supervision of a single entity, whether it is the insurer or another entity, is more likely to be complete and to cover all the required subjects than training done piecemeal, using several different training entities.

2592.03

Commentator: David Chetcuti, ACCA

Date of Comment: March 8, 2005

Summary of Comment: The Department should pin down exactly what the workers' compensation curriculum should contain. There must be uniformity in teaching standards.

Response to Comment: The commissioner has considered this comment and has rejected it. The commissioner has determined that it is inappropriate to mandate a standard curriculum at this point. The commissioner has also determined that requiring a more prescriptive and uniform curriculum and training materials would directly conflict with the spirit of the statute which states "the regulations adopted pursuant to this section shall, to the greatest extent possible, encourage the use of existing private and public education, training, and certification programs."

Commentator: Angie Wei, California Labor Federation

Date of Comment: March 17, 2005

Summary of Comment: Claims adjuster and medical bill reviewer materials should be submitted to the Department of Insurance for review and oversight.

Response to Comment: The commissioner has considered this comment and has rejected it. The commissioner does not have the authority to mandate a specific curriculum nor does he have the authority to approve or disapprove specific training materials. The responsibility for certifying that claims adjusters and medical bill reviewers receive adequate training rests with insurers, as defined.

Commentator: Kathleen Bissell, Liberty Mutual

Date of Comment: March 21, 2005

Summary of Comment: The list of curriculum topics should be expanded to include recommended specific topics.

Response to Comment: The commissioner has considered this comment and has rejected it. The list of new topics recommended is commendable; however it is not necessary to specify them in the regulations. The commissioner does not have the authority to mandate a curriculum; instead he has the authority to set minimum standards. Insurers are free to offer more training and include more subjects in their training. The

current list of topics is based on the commissioner's determination that claims adjusters who receive training in those subjects will be able to do an adequate job of handling claims.

Commentator: Jeffrey White, Acacia Pacific Holdings

Date of Comment: May 28, 2005

Type of Comment: Written

Summary of Comment: The Department should develop a well-defined curriculum for each adjuster level and designation. Under the proposed regulations, there is no guarantee that an adjuster will receive comprehensive training despite fulfilling the requisite hours of educational training.

Response to Comment: The commissioner has considered this comment and rejected it. The commissioner has determined that it is inappropriate to mandate a standard curriculum at this point. The commissioner has also determined that requiring a more prescriptive and uniform curriculum and training materials would directly conflict with the spirit of the statute which states "the regulations adopted pursuant to this section shall, to the greatest extent possible, encourage the use of existing private and public education, training, and certification programs."

2592.03(a) (2)

Commentator: Steve Cattolica, AdvoCal

Date of Comment: March 11, 2005

Summary of Comment: Should include training in referral to other medical providers; should be explicit regarding referrals for consultation, specialty care and other providers.

Response to Comment: The commissioner has considered this comment and has rejected it. The commissioner does not have the authority to mandate a specific curriculum and has therefore listed subject areas that must be covered in order to provide for minimum standards of training.

2592.04

Commentator: Michael McClain, CWCI

Date of Comment: March 21, 2005

Type of Comment: Written

Summary of Comment: The reference in the first paragraph of Section 2592.04 should be to Section 2592.01(h), not Section 2592.04(h).

Response to Comment: The commissioner has considered this comment and has accepted it. This was a typographical error that was corrected. There was no Section 2592.04(h) in this version of the regulations.

Commentator: Steve Cattolica, AdvoCal

Date of Comment: March 11, 2005

Summary of Comment: Reference to Section 2592.04(h) is incorrect. Believe it should be a reference to 2592.01(h).

Response to Comment: The commissioner has considered this editorial comment and has accepted it. The clerical mistake has been corrected and the reference in the regulations has been changed.

Commentator: Marie W. Wardell, State Compensation Insurance Fund (SCIF)

Date of Comment: March 21, 2005

Summary of Comment: The provision in Section 2592.02(c) that permits credit for claims adjusters for classes taken up to two years earlier should also apply to medical bill reviewers.

Response to Comment: The commissioner has considered this comment and has accepted it in part and rejected it in part. The commissioner has determined that medical bill reviewers need not be treated exactly like claims adjusters because their work is somewhat different. The commissioner has also determined that medical bill reviewers who are not otherwise exempt from training can use courses taken within one year prior to the effective date of these regulations to satisfy curriculum requirements.

2592.04(c)

Commentator: Marie W. Wardell, State Compensation Insurance Fund (SCIF)

Date of Comment: March 21, 2005

Summary of Comment: The provision regarding post-designation training for medical bill reviewers does not include the provision for claims adjusters specifying that the training need not be in a classroom with an instructor.

Response to Comment: The commissioner has considered this comment and has rejected it. The commissioner has determined that the types of training permitted for post-designation training of medical bill reviewers should be somewhat more limited than that for claims adjusters, particularly since the number of hours of training has been reduced to only 16 hours every two years.

2592.04(e)

Commentator: Steve Cattolica, AdvoCal

Date of Comment: March 11, 2005

Summary of Comment: The specified topics should include more detailed requirements.

Response to Comment: The commissioner has considered this comment and has rejected it. The commissioner does not have the authority to impose a specific curriculum.

2592.05

Commentator: Jeffrey White, Acacia Pacific Holdings

Date of Comment: May 28, 2005

Type of Comment: Written

Summary of Comment: Specific information should be provided on a standard certificate of course completion to confirm and enforce compliance with the training requirements. An exam should also be considered as a means of ensuring compliance.

Response to Comment: The commissioner has considered this comment and rejected it. He has deemed that the proposed regulations establish an adequate process for establishing the minimum training requirements for claims adjusters and ensuring their compliance in meeting the established standards. Appropriate designation forms for trained and experienced claims adjusters, medical-only claims adjusters and medical bill reviewers have been developed and are part of the regulations.

2592.06

Commentator: David Farber, AAICP

Date of Comment: March 17, 2005

Type of Comment: Written

Summary of Comment: The requirement to give a copy of a claims adjuster's designation form to a requesting policy holder or injured worker at their request should be eliminated because it duplicates information that will be publicly available on the Department of Insurance website.

Response to Comment: The commissioner has considered this comment and rejected it. This is incorrect. This information will not be available on the commissioner's website. Information related to the certification will be available on the Department of Insurance website, but the information related to designations will be maintained by the insurer and will only be made available to the Department upon request and will not be posted on the Department website.

2592.06(b)

Commentator: Steve Cattolica, AdvoCal

Date of Comment: March 11, 2005

Summary of Comment: It seems appropriate to charge trained and designated individuals to separately be responsible for the same record keeping.

Response to Comment: The commissioner has considered this comment and has rejected it. The responsibility for designating claims adjusters and medical bill reviewers rests with insurers as defined and therefore the responsibility for record keeping must rest with insurers. The commissioner also notes that each individual claims adjuster and bill reviewer will have his or her own designation indicating that the claims adjuster or medical bill reviewer has been trained or is experienced.

2592.06(e)

Commentator: Michael McClain, CWCI

Date of Comment: March 21, 2005

Summary of Comment: The language of this subsection is confusing and ambiguous; alternative language is provided.

Response to Comment: The commissioner has considered this comment and has rejected it. The commissioner notes that the commentator has not explained in what way the language is confusing and ambiguous. The alternative language provided is no more clear and unambiguous than the current regulation language.

2592.07

Commentator: David Chetcuti, ACCA

Date of Comment: March 8, 2005

Summary of Comment: If anyone completed their Insurance Educational Association program for a WCCA or WCCP certificate since 1/1/03, then that person should be classified as an experienced adjuster.

Response to Comment: The commissioner has considered this comment and has rejected it. The criteria for designation as an experienced claims adjuster are clearly delineated in the regulations and do not discriminate among private training programs.

2592.10/2592.14

Commentator: Marie W. Wardell, SCIF

Date of Comment: March 21, 2005

Summary of Comment: SCIF already has systems in place to administer the designation process but the current program cannot produce forms with the required format, although the forms it does produce can have the same required criteria. Suggest that the commissioner permit reformatting of the required forms provided that they contain all the necessary elements and the form has been approved by the Department of Insurance.

Response to Comment: The commissioner has considered this comment and has rejected it. It is important to have uniformity of format for the designation forms since claims adjusters and medical bill reviewers often move from company to company.

COMMENTS RESULTING FROM NOTICE OF AVAILABILITY OF REVISED TEXT DATED SEPTEMBER 1, 2005

General Comments

Commentator: Carolyn Richard, City of Santa Ana

Date of Comment: September 9, 2005

Type of Comment: Written

Summary of Comment: Some creative litigation may prevail on an allegation of improper “designations” or lack of requisite training. Recommend that the regulations attempt to control any creative litigation by either specifying the valuation of penalties or what jurisdiction a case can be heard in.

Response to Comment: The commissioner has considered this comment and rejected it. The commissioner has determined that the regulations cannot control third-party attempts to litigate, especially if they may be entitled to do so. The statutes establishing this

system did not establish monetary penalties or an administrative hearing process for violations other than those that already may exist.

Commentator: Steven Suchil, American Insurance Association

Date of Comment: September 15, 2005

Type of Comment: Written

Summary of Comment: The changes to the regulations are so detailed and specific and impose new requirements so as to be beyond what was originally noticed and do not meet the Government Code Section 11349.1 necessity standard.

Response to Comment: The commissioner has considered this comment and has rejected it. First, changes to the regulations are allowed pursuant to the California Government Code and applicable regulation that are substantially related with proper notice and opportunity for comment. This has been done at each change to the proposed regulations. Second, changes to regulations typically are detailed and specific and may impose different or new requirements, which, again, are given proper notice and opportunity for comment. The changes to the regulations are a result of the Initial Statement of Reasons and previous public comment both at hearing and in writing. Finally, the changes to the regulations do meet the necessity standard as required by Government Code Section 11349.1, as defined in Government Code Section 11349(a), such that the record of the rulemaking proceeding demonstrates by substantial evidence the need for the regulation to effectuate the purpose of the statute the regulation implements, interprets, or makes specific, taking into account the totality of the record. The very purpose of making detailed and specific changes and imposing new requirements in the regulations is to comply with the necessity requirement based upon the evidence obtained and record created.

Commentator: Samuel Sorich, Association of California Insurance Companies

Date of Comment: September 16, 2005

Type of Comment: Written

Summary of Comment: The changes to the proposed regulations do not comply with California Government Code Section 11346.8(c) and a new public notice must be noticed. A number of the provisions materially alter requirements, rights, and responsibilities, as noted, which are not “nonsubstantial.” These are changes on which the public has a right to comment at public hearing. Several changes are not “sufficiently related” and could not have been determined prior to the September 1 revision and prior notices.

Response to Comment: The commissioner has considered this comment and rejected it. The Initial Statement of Reasons issued on July 29, 2004 set forth the notice pertaining to the promulgation of these regulations. Contained in that Statement was adequate notice concerning all changes that occurred in the September 1, 2005 revision. This includes, but is not limited to, the requiring of training of all claims adjusters and medical bill reviewers, a process to determine and verify training through designation (previously called certification), a process to make sure hourly requirements are met for adjusters and medical bill reviewers to be adequately trained before being authorized to adjust claims or medical bills, a process to keep records, and to make sure that insurers certify to the

commissioner compliance as required by the statutory requirements. Therefore, no subsequent public hearing is required and the 15-day comment period conforms to the statutory and regulatory requirements.

2592.01(f)

Commentator: David Farber, AAICP

Date of Comment: September 12, 2005

Type of Comment: Written

Summary of Comment: It is unclear whether or not an adjuster can be designated as an “experienced claims adjuster” upon taking and passing the self-insurance administrators exam (Title 8, Section 15452 CCR). Recommend that it be clarified if adjusters who have passed the exam within the past 5 years can be grandfathered in or if they must also be designated as such by insurers for whom they work.

Response to Comment: The commissioner has considered this comment and has rejected it. He has determined that the definition, as written is clear. The use of the word “and” indicates that the adjuster must both pass the exam and be designated as an experienced claims adjuster by an insurer. Part of this definition was clarified to allow grandfathering for those who have passed the exam and have worked or supervised workers’ compensation claims adjusters since passing the exam.

Commentator: Paul Ramont, St. Paul Travelers

Date of Comment: September 14, 2005

Type of Comment: Written

Summary of Comment: The definition of “experienced claims adjuster” should be modified to include a person responsible for the immediate supervision of a claims adjuster. This would be consistent with the definition for “claims adjuster.”

Response to Comment: The commissioner has considered this comment and accepted it. The definition of “experienced claims adjuster” was modified to include a person responsible for the immediate supervision of a claims examiner.

Commentator: Paul Ramont, St. Paul Travelers

Date of Comment: September 14, 2005

Type of Comment: Written

Summary of Comment: Should reinstate the phrase that was stricken related to having 5 of the last 8 years of experience working in the California workers’ compensation system. This would recognize office management and other consultants who are directly involved in the day-to-day strategic and financial management of claims.

Response to Comment: The commissioner has considered this comment and accepted it in part and rejected it in part. The stricken phrase was not reinstated. However the spirit of the commentator’s comments were accepted as additional language was added to clarify that those supervising workers’ compensation claims adjusters would also qualify as an “experienced claims adjuster” considering they met all other requirements of the definition.

Commentator: Michael McClain, CWCI

Date of Comment: September 16, 2005

Type of Comment: Written

Summary of Comment: The definition of “experienced claims adjuster” should be modified to include a person responsible for the immediate supervision of a claims adjuster. This would be consistent with the definition for “claims adjuster” and would allow supervisors, managers, and other consultants who are directly involved in the day-to-day strategic and operational management of claims to meet the standard.

Response to Comment: The commissioner has considered this comment and accepted it. The definition of “experienced claims adjuster” was modified to include a person responsible for the supervision of a claims adjuster.

Commentator: Michael McClain, CWCI

Date of Comment: September 16, 2005

Type of Comment: Written

Summary of Comment: Should reinstate the phrase that was stricken related to having 5 of the last 8 years of experience working in the California workers’ compensation system. This would recognize office management and other consultants who are directly involved in the day-to-day strategic and financial management of claims.

Response to Comment: The commissioner has considered this comment and accepted it in part and rejected it in part. The stricken phrase was not reinstated. However the spirit of the commentator’s comments were accepted as additional language was added to clarify that those supervising workers’ compensation claims adjusters would also qualify as an “experienced claims adjuster” considering they met all other requirements of the definition.

2592.01(g)

Commentator: Steven Suchil, American Insurance Association

Date of Comment: September 15, 2005

Type of Comment: Written

Summary of Comment: The deleted language should be added to allow medical-only claims adjusters who have completed all training requirements to be an experienced claims adjuster since only experienced medical-only claims adjusters can train other medical-only claims adjusters

Response to Comment: The commissioner has considered this comment and has rejected it. The language allowing medical-only claims adjusters who have just been trained to be considered “experienced” was placed in the prior definition in error and was not consistent with the definition of “experienced claims adjuster.” The term “experienced” has been used in these regulations to represent a period of time that a person has worked. Merely attending a training program does not demonstrate that a person has “experience” based upon the evidence and comments received. In addition, allowing persons who have merely received training and without actual experience to supervise others that are untrained may result in inadequate supervision and not meet the purpose of the statutory mandate.

Commentator: Patrick Humphrey, American All Risk Loss Administrators

Date of Comment: September 15, 2005

Type of Comment: Written

Summary of Comment: Recommend the regulations expand the definition of “experienced medical-only adjuster” to include a person who has successfully passed the written self-insurance administrators examination (Title 8, Section 15452 CCR) provided that person has either worked as a medical-only claims adjuster continuously since passing the exam or has passed the exam in the past 5 years and is designated a medical-only claims adjuster by an insurer. Expansion of the definition would not harm public policy or be inconsistent with the regulations. The current definition puts limits on insurers that might want to designate someone as a medical-only claims adjuster.

Response to Comment: The commissioner has considered this comment and rejected it. He has determined that an individual who has passed the self-insurance administrator’s exam and either worked continuously since passing the exam or passed the exam within the past 5 years and is designated as an adjuster, can be designated as an “experienced claims adjuster” and can do all the work of a medical-only claims adjuster. Passing the self-insurance administrator’s exam demonstrates competency in all areas.

2592.01(i)

Commentator: Carolyn Richard, City of Santa Ana

Date of Comment: September 9, 2005

Type of Comment: Written

Summary of Comment: The definition of instructor should include both defense and applicant attorneys who are knowledgeable of California’s workers’ compensation system and qualified to be instructors. Many attorneys have achieved the designation of “certified specialist in workers’ compensation”.

Response to Comment: The commissioner has considered this comment and rejected it. The definition allows for “persons knowledgeable about specific workers’ compensation issues [such as workers’ compensation attorneys] who are not instructors may train students under the direction of an instructor.” However the commissioner has established certain experience levels for an instructor that he has deemed necessary to oversee an entire training program. If an attorney meets these qualifications, they can be an instructor.

Commentator: Michael McClain, CWCI

Date of Comment: September 16, 2005

Type of Comment: Written

Summary of Comment: It is unnecessary and inefficient to have workers’ compensation experts such as Agreed Medical Evaluators, treating physicians, workers’ compensation attorneys, disability rating evaluators, etc. to have to be supervised by another instructor if they cannot meet the experience standard for an instructor.

Response to Comment: The commissioner has considered this comment and rejected it. The definition allows for persons knowledgeable about specific workers’ compensation issues who are not instructors to train students under the direction of an instructor. The commissioner has determined that this definition allows sufficient flexibility for subject

matter experts to teach segments of the training curriculum. However, the commissioner believes it is important to have a single instructor oversee the entire training curriculum to ensure completeness, consistency and continuity in meeting the minimum training standards being established.

Commentator: Samuel Sorich, Association of California Insurance Companies

Date of Comment: September 16, 2005

Type of Comment: Written

Summary of Comment: The proposed definition of “instructor” is too narrow and should be more flexible because the best instructors may not have the required years of experience in California workers’ compensation. In addition, the time requirement should include management experience. The time period should be changed to “three years in the past eight years.”

Response to Comment: The commissioner has considered this comment and accepted it in part and rejected it in part. The requirements for instructor are based upon much input and comment from insurers that already have instruction programs and the amount of experience to qualify as an instructor has already been reduced from eight years out of twelve to five years out of eight of experience in adjusting California workers’ compensation claims. Instructors should have substantial experience and knowledge to deal with the curriculum and educate trainees. The definition does allow for persons who have general experience in California workers’ compensation claims, as compared to specific years of claims adjusting, to be instructors, and that should allow managers of workers compensation claims adjusting staff to be instructors. Finally, persons who do not qualify as an instructor can instruct under the direction of a person who qualifies as an instructor.

2592.01(k)

Commentator: Michael McClain, CWCI

Date of Comment: September 16, 2005

Type of Comment: Written

Summary of Comment: The term “medical billing entity” should be changed to “medical bill review entity” to eliminate confusion between medical billing entities that manage charges for physicians and providers and medical bill reviewers who adjust medical bills for insurers.

Response to Comment: The commissioner has considered this comment and rejected it. The term “medical billing entity” is defined in the statute that established these regulations (Insurance Code Section 11761(c)).

2592.01(l)

Commentator: Michael McClain, CWCI

Date of Comment: September 16, 2005

Type of Comment: Written

Summary of Comment: The term “medical billing entity” should be changed to “medical bill review entity” to eliminate confusion between medical billing entities that

manage charges for physicians and providers and medical bill reviewers who adjust medical bills for insurers.

Response to Comment: The commissioner has considered this comment and rejected it. The term “medical billing entity” is defined in the statute that established these regulations (Insurance Code Section 11761(c)).

2592.01(n)

Commentator: Michael McClain, CWCI

Date of Comment: September 16, 2005

Type of Comment: Written

Summary of Comment: The definition of “post-designation training” should be amended to allow for self-study that does not exceed half the number of hours required.

Response to Comment: The commissioner has considered this comment and rejected it. Self-study is not precluded by the regulations. The commissioner feels that the definition of “post-designation training” is sufficient and provides sufficient flexibility to claims adjusters to receive the training without compromising the integrity of the training.

2592.01(p)

Commentator: Michael McClain, CWCI

Date of Comment: September 16, 2005

Type of Comment: Written

Summary of Comment: Add language and/or a definition of “self-study” to the training regulations. The regulations imply that some of the required curriculum could be completed through self-study without an instructor. But the definition of instructor indicates otherwise. This needs to be clarified. Self-study is allowed in most continuing education programs. Allowing a certain number of educational units to be obtained through self-study would be consistent with the implementing statute.

Response to Comment: The commissioner has considered this comment and rejected it. Self-study is not precluded by the regulations. The commissioner feels that the definition of “post-designation training” is sufficient and provides sufficient flexibility to claims adjusters to receive the training without compromising the integrity of the training.

2592.02 (a)

Commentator: David Farber, AAICP

Date of Comment: September 12, 2005

Type of Comment: Written

Summary of Comment: The 160-hour training for claims adjusters is too burdensome and presents a substantial time burden on the trainees. The training should be shorter.

Response to Comment: The commissioner has considered this comment and has rejected it. The commissioner has determined that 160 hours of training with 120 of that being in a classroom is the minimum amount of training for workers’ compensation claims adjusters to be able to adequately handle claims. The commissioner came to this conclusion after consulting a diverse advisory counsel about the level of existing training

courses. The commissioner concluded that the majority of existing training programs that he and most people in the industry deemed to have a well-trained claims staff all had 160 hours or more of training for their employees. The majority of the existing training programs that the commissioner and many others felt had a claims staff that were not consistently performing their tasks at an adequate level had less than 160 hours of training for their employees.

Commentator: David J. Farber, AAICP

Date of Comment: September 12, 2005

Type of Comment: Written

Summary of Comment: Classroom training should not be required. Other non-workers' compensation claims adjusters are not required to do classroom training, but instead may earn designation/certification through hours worked in the insurance field and not training.

Response to Comment: The commissioner has considered this comment and rejected it. The commissioner has already responded to this comment from this commentator in a previous comment period. The commissioner has determined that the work of workers' compensation claims adjusters is more complex than most other insurance claims handling and that formal training is required to meet the minimum standards contemplated by the legislation enabling these regulations.

Commentator: Michael McClain, CWCI

Date of Comment: September 16, 2005

Type of Comment: Written

Summary of Comment: The references to subdivisions (f) and (g) of Section 2592.01 is incorrect and should refer to subdivisions (g) and (h).

Response to Comment: The commissioner has considered this comment and rejected it. The reference is to the correct subdivisions. Experienced claims adjusters in 2592.01(f) and experienced medical-only claims adjusters as defined in 2592.01(g) are the intend focus of these references, not experienced medical bill reviewers in 2592.01(h).

Commentator: Samuel Sorich, Association of California Insurance Companies

Date of Comment: September 16, 2005

Type of Comment: Written

Summary of Comment: The proposed 160 hours of instruction for claims adjusters is too long and should be reduced to 120 hours, of which 90 hours could be in classroom or self-study.

Response to Comment: The commissioner has considered this comment and rejected it. The number of hours of training follows what many insurers currently have and is based upon the comments and evidence provided to date. 120 hours is inadequate considering the number of topics to be covered and the complexity of the California workers' compensation system.

Commentator: Samuel Sorich, Association of California Insurance Companies

Date of Comment: September 16, 2005

Type of Comment: Written

Summary of Comment: The requirement of “classroom with an instructor” component of training should be modified to take in to account modern, effective means of training.

Response to Comment: The commissioner has considered this comment and rejected it. The definition of classroom has already been broadly defined to include the use of electronic medium and for instructors to communicate with it to students. Instruction is necessary to train persons unfamiliar with or needing training in the complexities of California workers’ compensation rather than self-study.

Commentator: Samuel Sorich, Association of California Insurance Companies

Date of Comment: September 16, 2005

Type of Comment: Written

Summary of Comment: More than 60% of training for medical-only claims adjusters must be conducted in the classroom with an instructor. Self-study should be an alternative and the training component should be equal between classroom/self-study and on-the-job training.

Response to Comment: The commissioner has considered this comment and rejected it. The definition of classroom has already been broadly defined to include the use of electronic medium and for instructors to communicate with it to students. Instruction is necessary to train persons unfamiliar with or needing training in the complexities of California workers’ compensation. The ratio of classroom time versus on-the-job training is similar to that required of claims adjusters with less class room time for medical-only claims adjusters due to the fewer topics required.

2592.02(b)

Commentator: Michael McClain, CWCI

Date of Comment: September 16, 2005

Type of Comment: Written

Summary of Comment: The revisions in this subsection are inadequate to accommodate interruptions due to sickness and disability provisions of state and federal law. The requirement to complete training within 24 consecutive months after training has commenced will result in disadvantage and discrimination. The leave time should be extended to 36 months and the time to complete the training should be suspended during the leave time.

Response to Comment: The commissioner has considered this comment and rejected it. The commissioner believes that the regulations are consistent and do comply with applicable state and federal laws. The time frame to complete the training is more than sufficient. With the nature of change that goes on in workers’ compensation claims adjusting, the commissioner believes that to extend the time to complete training beyond 24 months could jeopardize the quality and continuity of the training.

2592.02(c)

Commentator: David J. Farber, AAICP

Date of Comment: September 12, 2005

Type of Comment: Written

Summary of Comment: The Department should include credit for training by WCCP, CPCU, ARM and Certified Insurance Counselors toward fulfillment of the educational training requirements. Specific language proposed.

Response to Comment: The commissioner has considered this comment and rejected it. The proposed regulations already allow this as long as the course work fits the curriculum requirements in 2592.03. As 2592.02(c) in the proposed regulations states, “Any classes or courses taken within three (3) years before the effective date of these regulations that satisfy the curriculum requirement may be used to meet the hourly requirements upon verification by the student to the insurer of the type of course taken, the course of study, the date or dates taken, the person or organization providing the class or course, and the number of hours taken.”

Commentator: Michael McClain, CWCI

Date of Comment: September 16, 2005

Type of Comment: Written

Summary of Comment: The retroactive training credit period should be extended from three years to five years. The proposed limit could nullify credit for a significant amount of valid education. Some relevant training of adjusters will not qualify because of the cutoff dates. Those adjusters who have training and experience in both pre- and post-reform claim management should receive credit for that.

Response to Comment: The commissioner has considered this comment and rejected it. The commissioner has determined that it is necessary for claims adjusters to be trained within the requirements of the regulations in order to ensure a minimum level of competency. The workers’ compensation system has undergone significant changes in the past three years and more recent course content will reflect the changes. To extend the retroactive credit period beyond this point could result in the designation of adjusters who have not been trained on the new changes to the workers’ compensation system. The commissioner believes this would defeat the purpose of the regulations to ensure that workers’ compensation claims adjusters are properly trained and possess the necessary skills to perform their duties.

2592.02(d)

Commentator: David J. Farber, AAICP

Date of Comment: September 12, 2005

Type of Comment: Written

Summary of Comment: The continuing education requirements should be eliminated. Many other non-workers’ compensation adjusters do not have continuing education requirements and only 10 other states have continuing education requirements of this sort. If the department decides to include continuing education requirements it should reduce the hours to between 3 and 12 hours every 2 years.

Response to Comment: The commissioner has considered this comment and rejected it. The commissioner has determined that 30 hours of post-designation training every two years (and 20 hours every two years for medical-only claims adjusters) is not burdensome since it amounts to 3 or 4 days of training over a two year period. Considering all the legal and legislative changes that have taken place in this industry and continue to take

place, the commissioner had determined that ongoing education of claims adjusters on the changes in the law is imperative as a minimum qualification to be able to handle claims adequately.

Commentator: David J. Farber, AAICP

Date of Comment: September 12, 2005

Type of Comment: Written

Summary of Comment: The regulation language should be clarified to allow credit for training by WCCP, CPCU, ARM and Certified Insurance Counselors.

Response to Comment: The commissioner has considered this comment and rejected it. The commissioner has already answered this comment from this commentator in an earlier comment period. There is no need to amend the regulations to allow the recommended entities to provide training. The regulations do not specify a required training entity. Any of the recommended entities may qualify. Credit for training by these entities is not necessarily excluded if it is done after the effective date of the regulations and meets the other criteria laid out in 2592.02(e).

2592.02(g)

Commentator: Michael McClain, CWCI

Date of Comment: September 16, 2005

Type of Comment: Written

Summary of Comment: The provision of whether or not the insurer may provide the training directly or using an outside trainer is ambiguous and needs to be clarified. The reality is that necessary training may require a combination of in-house expertise with outside experts. The provision needs to be clarified to permit the maximum flexibility to insurers in utilizing both internal and external training sources to train their employees.

Response to Comment: The commissioner has considered this comment and rejected it. He has determined that the provision is clear and does not need clarification. The proposed regulations provide an insurer with significant flexibility to use both internal and external training resources in providing the necessary training curriculum to its claims adjusters. However, it is important that the training be anchored under a single instructor who will oversee the entire training to provide the continuity and consistency necessary to ensure the minimum training standards are met.

2592.02(i)

Commentator: Michael McClain, CWCI

Date of Comment: September 16, 2005

Type of Comment: Written

Summary of Comment: This subsection should be amended to reference subdivisions 2592.02(b) and (f) because they include certain time limitations that are relevant to this subdivision.

Response to Comment: The commissioner has considered this comment and rejected it. The subdivision states that an insurer cannot authorize someone to work as a claims adjuster that is not designated as a claims adjuster or has not been trained as a claims

adjuster pursuant to these regulations. The commissioner has determined that this subdivision is clear and that adding the suggested language is unnecessary and would not add any clarification to the subdivision.

2592.03(b)

Commentator: Dave Mitchell, Republic Indemnity

Date of Comment: September 6, 2005

Type of Comment: Written

Summary of Comment: Subrogation should be added as a required topic for medical-only claims adjusters because there can be third-party recovery rights on medical-only claims and the adjusting company has an obligation to recognize potential subrogation and investigate it on behalf of the policyholder.

Response to Comment: The commissioner has considered this comment and accepted it. He has determined that subrogation can occur in medical-only claims and is frequent enough to where it should be part of the required curriculum for medical-only claims adjusters.

Commentator: Samuel Sorich, Association of California Insurance Companies

Date of Comment: September 16, 2005

Type of Comment: Written

Summary of Comment: Topic “25. Reserving” should be listed as an excluded topic since setting reserves is not a normal activity of medical-only claims adjusters.

Response to Comment: The commissioner has considered this comment and rejected it. The commentator has not provided any evidence that medical-only claims adjusters will not set medical reserves. The definition of medical-only claims adjuster includes the duty of setting medical reserves and therefore should be a required topic.

2592.04

Commentator: Steven Suchil, American Insurance Association

Date of Comment: September 15, 2005

Type of Comment: Written

Summary of Comment: This section imposes duties and requirements not contemplated in Insurance Code Section 11761. Medical bill reviewers must fulfill certain requirements which go beyond establishing minimum standards and certification.

Subsection (a) requires an insurer to meet minimum training for medical bill reviewers while the previous version would require medical review entities to train and does not meet the APA authority standard and suffers from lack of clarity. Subsection (b) only imposes a duty of certification on insurers and not training. Subsection (b) also requires insurers to have medical bill reviewers trained that are not used by the insurer and this is unclear. Subsection (e) requires training and certification to be done by the insurer rather than the bill review entity, and the Notice of Availability of Revised Text did not indicate the necessity for this change, which is burdensome for insurers.

Response to Comment: The commissioner has considered this comment and has rejected it. Insurance Code Section 11761 imposes duties upon insurers to meet

standards established by the insurance commissioner for the training, experience, and skill of medical bill reviewers. Prior versions of these regulations required medical billing entities be responsible for this, which was not consistent with the statute and did not comply with Government Code Section 11349.1(a)(4), as pointed out to the department by the Office of Administrative law. To be consistent with the statutory authority and requirement in promulgating these regulations, the requirements for training, experience, and skill must fall upon the insurers so that the insurer can certify to the insurance commissioner that those persons performing medical bill review on the insurer's behalf, whether or not they are employees of the insurer or a medical billing entity, meet the statutory mandate. The use of third party medical billing entities by insurers cannot be an excuse for not demonstrating compliance with Insurance Code Section 11761 nor can the insurance commissioner impose those requirements on medical billing entities since the insurers are responsible. Demonstration of necessity for these provisions is sufficient in the rulemaking record. The commissioner believes these provisions meet the clarity standard.

Commentator: Marie Wardell, SCIF

Date of Comment: September 16, 2005

Type of Comment: Written

Summary of Comment: There should be a provision in 2592.04 for medical bill reviewers similar to that for claims adjusters in 2592.02(c) which would allow retroactive credit for training courses taken recently that meet the educational requirements detailed in the regulations. To not do so would unfairly penalize medical bill reviewers who began training in anticipation of the completion of these regulations and require redundant training of medical bill reviewers. Specific language proposed.

Response to Comment: The commissioner has considered this comment and accepted it in part and rejected it in part. The commissioner accepts the argument that there should be a similar provision in 2592.04 that allows retroactive credit for training courses taken recently that meet the educational requirements detailed in the regulations. He has added 2592.04(c) which accomplishes this task and allows a one-year retroactive credit period. While the spirit of the recommended language was met, the exact language was not used.

2592.04 (d)/ (e)

Commentator: Dave Mitchell, Republic Indemnity

Date of Comment: September 6, 2005

Type of Comment: Written

Summary of Comment: This subsection is unclear.

Response to Comment: The commissioner has considered this comment and accepted it. There was a typographical error that made the subsection unclear. This has been corrected and should eliminate any confusion.

Commentator: Roy Little, Insurance Educational Association (IEA)

Date of Comment: September 15, 2005

Type of Comment: Written

Summary of Comment: The word "who" was omitted in subsection (d) (now (e)).

Response to Comment: The commissioner has considered this comment and accepted it in part and rejected it in part. A change was made to this section to correct the typographical error and eliminate any confusion, but the change made differed from that recommended.

Commentator: Michael McClain, CWCI

Date of Comment: September 16, 2005

Type of Comment: Written

Summary of Comment: The word “who has” should be added to subsection (d) (now (e)) for clarification.

Response to Comment: The commissioner has considered this comment and accepted it in part and rejected it in part. A change was made to this section to correct the typographical error and eliminate any confusion, but the change made differed from that recommended.

2592.04 (e)/ (f)

Commentator: Michael McClain, CWCI

Date of Comment: September 16, 2005

Type of Comment: Written

Summary of Comment: “Other training entities” should be referenced in this subdivision to note that the medical bill review training can come from training entities other than the insurer.

Response to Comment: The commissioner has considered this comment and rejected it. He has determined that his subdivision is clear enough as written and that adding the suggested language is unnecessary. The training entity is irrelevant for this subdivision. Regardless of the training entity, the insurer must certify that the medical bill reviewer has completed the requisite training requirements.

2592.04(g)/ (h)

Commentator: Samuel Sorich, Association of California Insurance Companies

Date of Comment: September 16, 2005

Type of Comment: Written

Summary of Comment: Subparagraph (3) “workers’ compensation benefit provisions” should be removed from list of required topics because it does not directly relate to the activities of reviewing medical bills.

Response to Comment: The commissioner has considered this comment and has rejected it. Medical bills involve medical benefits to which injured workers are entitled, and medical bill reviewers should understand the provisions concerning such benefits to ascertain if such medical bills should be paid.

2592.05

Commentator: Carolyn Richard, City of Santa Ana

Date of Comment: September 9, 2005

Type of Comment: Written

Summary of Comment: It is burdensome and unreasonable for insurers, as defined, to “designate” employees of another company’s qualifications if they don’t control those employees. The bill review providers should be held accountable. It is more reasonable to require the bill review company to ensure compliance and provide details of how it meets the requirements.

Response to Comment: The commissioner has considered this comment and rejected it. The commissioner has determined that to remain consistent with the implementing legislation, an insurer, not a medical billing entity, must certify to the commissioner that its employees and those that work on its behalf meet the minimum standards adopted by the commissioner. To do so, the insurer, not the medical billing entity, should do the designation. As written, the proposed regulations do require medical billing entities to ensure compliance and demonstrate that compliance to the insurers with which they contract.

Commentator: Roy Little, Insurance Educational Association (IEA)

Date of Comment: September 15, 2005

Type of Comment: Written

Summary of Comment: Use of the word “designation” clashes with a long-standing similar use of the word within the insurance industry to identify an individual who has passed a rigorous course of specialized study and has attained a “designation” symbolizing particular expertise. Examples include WCCP, CPCU, and CIC. Request that another word be used instead of “designation.”

Response to Comment: The commissioner has considered this comment and rejected it. Because of definitions, the word “certification” was reserved for those written documents made under the penalty of perjury. The commissioner has determined that the word “designation” is appropriate for these forms and will identify an individual who has passed a course of specialized study and has attained a specific degree of expertise.

Commentator: Steven Suchil, American Insurance Association

Date of Comment: September 15, 2005

Type of Comment: Written

Summary of Comment: Section 2592.05 imposes duties and requirements on insurers not contemplated by Insurance Code Section 11761. The Designation provisions, which in essence become employment qualifications, go beyond the establishment of minimum standards and insurer certification to the Insurance Commissioner and impose duties on insurers, and therefore fail to comply with Government Code section 11349.1 authority standard. Subsection (e) of this section permits provision of designation and training forms by medical billing entities provided that the insurer obtains copies of all required records. This provision is burdensome to insurers and the Notice of Availability of Revised Text did not indicate the necessity for this change. It is recommended that subsection (e) be changed allow the insurer to review the records of the medical billing entity in sufficient detail to verify the designation in order to decrease the burden.

Response to Comment: The commissioner has considered this comment and has rejected it. The duties imposed by Insurance Code Section 11761, which include, but are not limited to, insurers following standards set by the insurance commissioner and

certifying those standards are met, contemplate insurers maintaining adequate and reasonable documentation of compliance, which include providing and maintaining Designation forms. Without such forms, there would be no reasonable way for adjusters or bill reviewers to show compliance to insurers and, in turn, insurers to show compliance to the insurance commissioner, without every insurer being required to re-train each newly employed claims adjuster or bill reviewer despite prior employment or training through other insurers. As to subsection (e) and insurers being required to confirm the requirements with medical billing entities and obtain copies of all required records, the enabling statute clearly places that obligation upon insurers since medical billing entities do not certify. In addition, merely reviewing records to verify designation of a medical billing entity does not comply with the requirements of the enabling statute nor allow the insurance commissioner to ensure compliance with proper documentation. These provisions are directly related and are necessary to meet those statutory mandates and are not unduly burdensome upon insurers so as to allow the commissioner and the public to be informed regarding compliance. The Notice of Availability of Revised Text did indicate the change as shown in the revised text. Demonstration of necessity for these provisions is sufficient in the rulemaking record. The commissioner believes these provisions meet the clarity standard.

2592.06

Commentator: Steven Suchil, American Insurance Association

Date of Comment: September 15, 2005

Type of Comment: Written

Summary of Comment: Section 2592.06 imposes duties and requirements on insurers not contemplated by Insurance Code Section 11761. Section 2592.06 sets forth provisions for insurers to keep copies of all designation and post-designation forms, provide copies to new employers, to the adjuster or medical bill reviewer, or to policyholder or claimant, which impose duties on insurers not in compliance with Government Code Section 11349.1. Also, the Notice of Availability of Revised Text did not indicate the necessity for the changes to this section, which are needlessly burdensome for insurers.

Response to Comment: The commissioner has considered this comment and has rejected it. The duties imposed by Insurance Code Section 11761, which include, but are not limited to, insurers following standards set by the insurance commissioner and certifying those standards are met, contemplate insurers maintaining adequate and reasonable documentation of compliance. These provisions are directly related and are necessary to meet those statutory mandates and are not unduly burdensome upon insurers so as to allow the commissioner and the public to be informed regarding compliance. In addition, provision of the revised regulation text with the Notice of Availability of Revised Text is satisfactory notice and allows opportunity for comment and the changes are necessary to comply with the statutory mandate. Demonstration of necessity for these provisions is sufficient in the rulemaking record. The commissioner believes these provisions meet the clarity standard.

Commentator: Samuel Sorich, Association of California Insurance Companies

Date of Comment: September 16, 2005

Type of Comment: Written

Summary of Comment: The use of the term “or acting on behalf” incorrectly describes an insurers responsibility to maintain copies of designation forms. This term can be wrongly interpreted to mean insurers must maintain copies relating to employees of third-party entities that adjust claims for insurers. This section should be revised to make clear that insurers are only required to maintain copies relating to its own employees. A three year period for maintaining records would be reasonable.

Response to Comment: The commissioner has considered this comment and has rejected it. The term “employed” in the enabling statute has been defined broadly to include both employees of insurers and those persons working on the insurer’s behalf. Otherwise, insurers may subvert the intent of the legislation by having all persons adjusting claims or performing medical bill review work for third parties with which the insurer contracts. In addition, the insurer is required by the statute to certify the qualifications all persons adjusting or performing medical bill review and not third parties. The commissioner has determined that an insurer should maintain copies of records pertaining to these regulations for the period that the claims adjuster or medical bill reviewer is employed and for a five year period thereafter for the purposes of proving compliance with the statute and to allow for review by the commissioner or administrative director.

2592.06(a)

Commentator: Harry Monroe, Jr., Concentra

Date of Comment: September 16, 2005

Type of Comment: Written

Summary of Comment: Requiring an insurer to take responsibility for providing and maintaining designations for medical billing entities and other third-parties working on the insurers behalf may prove confusing. A bill review entity could potentially be found in non-compliance even though the entity may have completed the steps necessary to comply with the requirements.

Response to Comment: The commissioner has considered this comment and rejected it. The proposed regulations require an insurer to “maintain” copies of designation forms for all its employees and those that work on its behalf, however the regulations do not require an insurer to “provide” designation forms. The insurer can delegate this responsibility to a third party such as a medical billing entity. However the statute is clear that “every insurer shall certify to the commissioner that the personnel employed by the insurer to adjust workers’ compensation claims, or employed for that purpose by a medical billing entity with which the insurer contracts, meet the minimum standards adopted by the commissioner.” Hence, the need to maintain copies of the designation forms to substantiate the certification.

Commentator: Michael McClain, CWCI

Date of Comment: September 16, 2005

Type of Comment: Written

Summary of Comment: There are words that seem to be missing from this section. Language needs to be added to clarify this section.

Response to Comment: The commissioner has considered this comment and accepted it. There was a typographical error where a word was omitted. We have added language to this section to clarify it, although it differed from the exact language recommended by the commentator.

2592.06(d)

Commentator: Michael McClain, CWCI

Date of Comment: September 16, 2005

Type of Comment: Written

Summary of Comment: This section should be amended to include all levels of claims adjusters and reviewers, including experienced ones. Language provided.

Response to Comment: The commissioner has considered this comment and rejected it. This is unnecessary as the definitions of claims adjuster, medical-only claims adjuster, and medical bill reviewer all include the experienced version of those positions as part of their definition.

2592.06(f)

Commentator: David J. Farber, AAICP

Date of Comment: September 12, 2005

Type of Comment: Written

Summary of Comment: Recommend that the “20 days” allotted to an insurer to issue a designation form to a claims adjuster, medical-only claims adjuster or medical bill reviewer upon request be changed to “20 working days”. Four weeks to respond is more preferable than two weeks.

Response to Comment: The commissioner has considered this comment and accepted it.

Commentator: Carolyn Richard, City of Santa Ana

Date of Comment: September 9, 2005

Type of Comment: Written

Summary of Comment: Recommend that the “20 day” period allotted to an insurer to issue a designation form to a claims adjuster, medical-only claims adjuster or medical bill reviewer be changed to “20 working days”.

Response to Comment: The commissioner has considered this comment and accepted it.

Commentator: Carolyn Richard, City of Santa Ana

Date of Comment: September 9, 2005

Type of Comment: Written

Summary of Comment: The proposed regulations are unclear regarding maintenance of records. Recommend that it be clearly delineated in the regulations that the documentation is subject to OBAE audits.

Response to Comment: The commissioner has considered this comment and rejected it. He has determined that the proposed regulations are clear that records must be maintained for whatever jurisdictional agency, CDI or DWC, requires them.

2592.06(g)

Commentator: David Farber, AAICP

Date of Comment: September 12, 2005

Type of Comment: Written

Summary of Comment: The requirement to give a copy of a claims adjuster's designation form to a requesting policy holder or injured worker at their request should be eliminated because it duplicates information that will be publicly available on the Department of Insurance website.

Response to Comment: The commissioner has considered this comment and rejected it. This is incorrect. This information will not be available on the commissioner's website. Information related to the certification will be available on the Department of Insurance website, but the information related to designations will be maintained by the insurer and will only be made available to the Department upon request and will not be posted on the Department website.

Commentator: Kelly Weigand, First Health

Date of Comment: September 15, 2005

Type of Comment: Written

Summary of Comment: The insurer should remove the name of the adjuster from the designation form to maintain the privacy of the adjuster. As an alternative, the insurer can just attest that the adjuster is qualified.

Response to Comment: The commissioner has considered this comment and rejected it. He has determined that having the adjuster's name on the designation form does not violate the adjuster's privacy. It provides no personal information beyond the individual's name which is necessary to verify to the parties involved that the person adjusting claims is qualified.

Section 2592.07

Commentator: Steven Suchil, American Insurance Association

Date of Comment: September 15, 2005

Type of Comment: Written

Summary of Comment: The types and amount of detailed information required by Section 2592.07 do not appear to comply with the authority standard of Government Code Section 11349.1 and go far beyond the requirements of Insurance Code Section 11761. Also, the Notice of Availability of Revised Text did not indicate the necessity for the changes to this section, which are needlessly burdensome and expensive for insurers.

Response to Comment: The commissioner has considered this comment and has rejected it. Insurance Code Section 11761 requires certification by insurers to the insurance commissioner that standards established by the insurance commissioner have been met. This requirement contemplates the need for the information to ascertain

compliance with the statutory mandate. In addition, provision of the revised regulation text with the Notice of Availability of Revised Text is satisfactory notice and allows opportunity for comment and the changes are necessary to comply with the statutory mandate. Demonstration of necessity for these provisions is sufficient in the rulemaking record. The commissioner believes these provisions meet the clarity standard.

Commentator: Samuel Sorich, Association of California Insurance Companies

Date of Comment: September 16, 2005

Type of Comment: Written

Summary of Comment: Certification should only apply to personnel employed by the insurer and not to the employees of employees of other entities or medical billing entities.

Response to Comment: The commissioner has considered this comment and has rejected it. The statutory authority for these regulations is clear and the regulations are consistent with it. The term “employed” has been defined broadly to include both employees of insurers and those persons working on the insurer’s behalf. Otherwise, insurers may subvert the intent of the legislation by having all persons adjusting claims or performing medical bill review work for third parties with which the insurer contracts. In addition, the insurer is required by the statute to certify the qualifications all persons adjusting or performing medical bill review and not third parties.

2592.07(a)

Commentator: Kelly Weigand, First Health

Date of Comment: September 15, 2005

Type of Comment: Written

Summary of Comment: Rather than require documented evidence, each insurer could certify its compliance and the state could request to audit the insurer’s records. This would be less onerous, especially in light of the additional information being requested by the state.

Response to Comment: The commissioner has considered this comment and rejected it. The proposed regulations are already doing what is being requested. Insurers must certify to the commissioner that their employees and others working on its behalf meet the minimum training standards established by the commissioner. Insurers must then maintain copies of the designations and must only show them to the Department of Insurance upon request. The insurer must maintain records because it would be impossible to demonstrate compliance upon audit or other request if they failed to keep records.

2592.07(b) and 2592.09

Commentator: Samuel Sorich, Association of California Insurance Companies

Date of Comment: September 16, 2005

Type of Comment: Written

Summary of Comment: The requirement for reporting the number of medical bill reviewers should be deleted because the insurer does not know for certain how many medical bill reviewers are reviewing its medical bills

Response to Comment: The commissioner has considered this comment and has rejected it. Why would the insurer not know? If the insurer has its own medical bill reviewers it should know how many it is employing at any given time. Also, if the insurer is using a medical billing entity, the insurer can ask the medical billing entity for this information along with receiving the required designations for those reviewing medical bills as required by these regulations.

2592.12

Commentator: David Farber, AAICP

Date of Comment: September 12, 2005

Type of Comment: Written

Summary of Comment: The designation form for experienced claims adjuster or experienced medical-only claims adjuster should also denote if and when the written self-insurance administrators examination (Title 8, Section 15452 CCR) was taken and passed, since that is another way you can be designated.

Response to Comment: The commissioner has considered this comment and accepted it. The form has been changed to accommodate the date for the passage of the self-insurance administrator's exam (Title 8, Section 15452 CCR).

Commentator: Carolyn Richard, City of Santa Ana

Date of Comment: September 9, 2005

Type of Comment: Written

Summary of Comment: The "experienced claims adjuster and medical-only claims adjuster" designation form should be modified to include a selection denoting the successful completion of the written self-insurance administrator's examination (Title 8, Section 15452 CCR). This should be done in lieu of denoting the total years of California experience.

Response to Comment: The commissioner has considered this comment and accepted it in part and rejected it in part. The form has been changed to accommodate the date for the passage of the self-insurance administrator's exam. However, remaining consistent with the definition for an experienced medical bill reviewer, the "years of experience" remains on the designation form as an option for achieving the designation.

2592.13

Commentator: Mary Savage, Blue Cross

Date of Comment: September 6, 2005

Type of Comment: Written

Summary of Comment: This experienced medical bill reviewer designation form should have a check box for "experienced medical bill reviewer", not for "experienced claims adjuster" and "experienced medical-only claims adjuster."

Response to Comment: The commissioner has considered this comment and accepted it. This was a typographical printing error and an oversight. The check boxes were eliminated and replaced with text indicating this is for an experienced medical bill reviewer.

Comments Unrelated to Revised Text

Commentator: Susie White

Date of Comment: September 11, 2005

Commentator: Jamie Larscheid

Date of Comment: September 9, 2005

COMMENTS RESULTING FROM NOTICE OF REVISED TEXT DATED OCTOBER 4, 2005

2592.04(c)

Commentator: Michael McClain, CWCI

Date of Comment: October 18, 2005

Type of Comment: Written

Summary of Comment: The section establishes a one-year period prior to the effective date of the regulations within which medical bill reviewers can receive retroactive credit for relevant training. This retroactive period for bill reviewers should be at least equivalent to the three-year period granted for claims adjusters. The regulatory process has taken longer than expected and the proposed one-year period would nullify credit for many medical bill reviewers who proactively did their training.

Response to Comment: The commissioner has considered this comment and rejected it. The commissioner has determined that this is more than sufficient retroactive period to compensate for any anticipated delay in promulgation the regulations. Furthermore, the “experienced” definitions and the training requirements for medical bill reviewers are not equivalent to those for claims adjusters.

Other Comments

Commentator: David Farber, AAICP

Date of Comment: October 19, 2005

Type of Comment: Written

Summary of Comment: The commenter made comments regarding the unduly burdensome nature of the basic training requirements (2592.02(a)); recommendations to include specific workers compensation certification or designations in the language of our regulations (section 2592.02(c)); a recommendation that we remove the continuing education requirement (2592.02(d)); and a recommendation that we remove the requirement of an insurer to provide a copy of a claims adjuster’s designation form to a requesting policyholder or injured worker (2592.06(g)).

Response to Comment: The commissioner has considered this comment and rejected it. All the comments made in this letter were comments pertaining to sections of the regulations that were not changed from the previous comment period and not open to comment during this period. Consequently, the comments in this letter have deemed

irrelevant. Furthermore, in large part this letter was a list of comments made by the commentator in previous comment periods for which we have already responded.

Comments Unrelated to Revised Text

Commentator: Dave Mitchell,

Date of Comment: October 14, 2005